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AUTHOR Ferguson, E. Elaine; Ferguson, Tammy McCormick; Jacobs, John
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ABSTRACT

The Early Childhood Development Communique articulated a commitment to increasing positive outcomes for children from birth to age 6 in Canada. Noting that owners and boards of child care programs are charged with providing a quality service to young children and their families, this discussion paper articulates the owners' and boards' responsibilities, the processes used in exercising these responsibilities, and how the role relates to the delivery of a quality child care service. Six responsibility areas of the owner's and board's role are noted: direction, guardianship, public relations, advocacy, legal conduct, and ethical conduct. The processes involved in exercising their role involve: (1) defining their role and how their direction, public relations, and advocacy will be effective in achieving the provision of a quality child care service; (2) communicating in a documented and oral format; (3) putting systems into place to monitor their performance and that of the administrator; and (4) evaluating their performance and the performance of the administrator regularly in relation to their respective roles. The six areas of responsibility and the process used in exercising their responsibilities together describe the role of an owner or board. Several aspects of incorporation legislation that have an effect on the role of owners/boards are noted. Findings from key informant interviews with provincial and territorial directors of early child development services and focus group participants are highlighted to illustrate the challenges currently faced by child care programs in Canada and their frustration in not having the capacity to realize their intention to provide a quality child care service. The paper's three appendices contain the management areas grid, a worksheet on ethical decision making, and an overview of incorporation legislation affecting the ownership of child care facilities in the 13 provincial and territorial jurisdictions. (Contains 13 references.) (KB)

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Maximizing Child Care Services: The Role of Owners and Boards

A discussion paper
by Elaine Ferguson, M Ed.
Tammy McCormick Ferguson, BA

Legislation Review
by John Jacobs, MA

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100-1200 Tower Road
Halifax, NS
B3H 4K6
902 423-8199

Early Childhood Community Development Association
395 Ontario St
St Catharines, ON
L2N 7N6
905 646-7311

Visit The Child Care Resource Link: Owners & Boards web page at **www.ecedc.org/ccresourcelink**

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Since over ninety-five percent of child care practitioners are female (Bertrand, Beach, Cleveland, 2000) the feminine is used when referring to the administrator.

Table of Contents

Introduction to the Framework 1
The Role of Owners and Boards 5
Current Context 49
Appendices: 53
Appendix A: Management Areas Grid 53
Appendix B: Ethical Decision-making Worksheet 57
Appendix C: Overview of Legislation 61

Maximizing Child Care Services, the Role of Owners and Boards

A discussion paper

By E. Elaine Ferguson and Tammy McCormick Ferguson

Introduction

September 2000 marked a significant change in the policy direction of the provincial, territorial and federal governments in relation to children ages 0-6. With the signing of the Early Childhood Development Communiqué, a commitment to increasing positive outcomes for children ages 0-6 was articulated. Four areas of emphasis were identified, one of which was early childhood care and learning. The cornerstone of this area, indeed of all early childhood development initiatives, is a quality child care system. Research (Weikart,1992; Kohen et al, 2000; Doherty, 2000; Mustard & McCain, 1999) indicates that quality child care programs contribute significantly to more positive outcomes for children 0-6. A quality child care system enhances and supports all the other early child development services targeted at the individual child and their families.

With this recognition of the role quality child care can play in meeting the terms of the First Minister's Early Childhood Development Communiqué, (2000) attention is being given to the ingredients needed in the provision of a quality child care program. As more elements in quality child care are identified and researched, a clearer picture is emerging to guide the child care sector in what must be in place to provide quality child care.

This discussion paper is about the license holder of a child care service and the role that license holder has in the provision of a quality child care service. The license holder is known in legislation as the Licensed Operator. In all provinces and territories except Prince Edward Island,[1] the method of incorporation determines what entity receives the license. If the service is incorporated as a non-profit society or a co-operative, the entity is a Board of Directors. If the service is incorporated or registered as a business, the entity is an owner who may be a sole proprietor, a partnership, or a corporation.

With the commitment of the provinces and territories to ensuring positive outcomes for children in the early years, any service to children and families has to be a quality service. The licensing expectations laid down to license a child care centre must be clear that the person holding the license is accountable to the public to provide a quality child care service. A quality child care service must be the purpose of owners and boards of licensed child care centres.

The primary assumption upon which this paper is built is that the provision of quality child care is the purpose of a child care service, and owners and boards are entrusted with that purpose. Research has identified a number of factors, both stand alone and contextual, that, when present, indicate a higher quality of child care then when those factors are not

1. In Prince Edward Island, the supervisor/Administrator of the centre is the entity identified as the licensed operator on the license.

present. The "iron triangle" or ratios, group size and staff training (Doherty, 2000); higher salaries, access to professional development opportunities, and services and resources to support child care practitioners in their work (Goelman et al, 2000), all have implications for owners and boards in their provision of a quality child care service. It is not the intention of this paper to explore the indicators of a quality program, rather to define the role of owners and boards in ensuring that their role will support daily practice in their provision of a quality child care service.

The purpose of providing a child care service is to provide a quality child care service. A quality child care service is defined as a program where the following are present for all those involved in the service –

- *The promotion of trusting, caring and co-operative relationships that respect the worth and uniqueness of the individual;*
- *Stimulation that encourages growth in the whole person; and*
- *Settings that are healthy and safe.*

These three components can be encapsulated as building relationships, stimulation and protection (Harms, 1994). Resources are available on the provision of quality programs from a teaching staff perspective (CCCF, 1999-2000). Ferguson (1997) and Jorde Bloom (1989) have articulated the importance of the role of the administrator in supporting teaching staff in their provision of quality programs to children. The challenge that owners and boards are faced with is identifying what their part is in providing this quality child care service.

Figure 1: Responsibilities for Maximizing Child Care Services

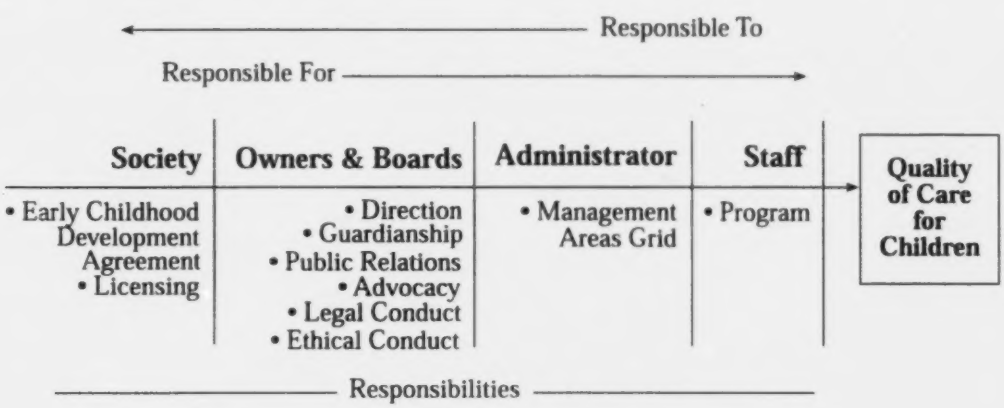

Figure 1: Responsibilities for Maximizing Child Care Services is a representation of the responsibilities of three key positions in maximizing child care services – staff, administrators, and owners and boards. The staff responsibility is to provide a quality program to children. Staff is responsible to the administrator. The administrator's responsibility (Appendix A: Management Areas Grid, Ferguson, 1997) is to manage the systems, policies & procedures, programs and services, legal and professional sanctions, planning and finances as they relate to relationships with staff, families, the licensed operator (owner or boards), community and the facility. She is responsible to the owner or board and for the staff. The responsibility of owners and boards in the realization of the quality child care purpose is establishing the direction this purpose will take and promoting and advocating for all factors that have an impact on the provision of this purpose. They are also responsible to conduct their role in a legal and ethical manner, guarding the service by ensuring that the resources are available to the administrator and staff. Owners and boards are responsible for the administrator and for the staff through her. Owners and boards are responsible to Society for the provision of a quality child care service. With the articulation of the Early Childhood Development Communiqué, society is responsible to owners and boards to set the minimum requirements for licensing a child care facility and for a commitment to quality child care. The framework (Figure 1) that defines the role responsibilities builds upon the work of Ferguson (1994) who articulated the components of a quality, professional child care delivery system in Nova Scotia.

Across Canada, an individual may carry out the responsibilities of one of the three positions, or an individual may carry out two or all three of the responsibilities. This would be the case when an owner may also be the administrator and work "on the floor" in a teaching position, or when an administrator is a board member. This multiple role responsibility can be confusing at times for the individuals in the roles as well as for those who come in contact with the individuals. It is critical to acknowledge which hat is being worn to ensure clarity in responsibilities and accountabilities. This paper is an attempt to articulate the role of owners and boards. The authors sincerely hope that this articulation will clarify the role of owners and boards and contribute to further maximizing child care services.

Format of the Paper

The role of owners and boards is discussed in terms of their responsibilities, the process used in exercising these responsibilities, and how the role relates to the delivery of a quality child care service. An overview of how legislation may affect the responsibility area is included. The paper also contains appendices of the Administrator's Management Areas Grid and an overview of relevant Legislation by Province and Territory.

In this paper:

- The administrator is the person who manages the overall day to day operations of the child care service.

- The staff are the child care teachers and support staff who are responsible to the administrator in the daily operations of the child care service.
- The director is a member of the entity to which the child care facilities license has been issued. A director, in the case of non profit society and co-operative incorporation, means a member of the board of directors of the society or co-operative. Entities incorporated as a business may also have a board of directors who act on behalf of shareholders.

The Role of Owners and Boards

The framework (*Figure 1: Responsibilities for Maximizing Child Care Services*) gives a visual representation of the responsibilities of owners and boards and to and for whom they are accountable. The role of owners and boards can be defined by six responsibility areas – direction, guardianship, public relations, advocacy, legal conduct, and ethical conduct; and the process they use in exercising their responsibilities i.e. articulate, communicate, monitor and evaluate. All of these areas and the process of exercising responsibility in the areas revolve around the provision of a quality child care service, the purpose of a child care service

The six responsibility areas of the owner's and board's role:

Direction

Owners and boards set the direction for the provision of a quality child care service, defining what the child care service intends to achieve and for whom.

Guardianship

Owners and boards hire, monitor and evaluate the administrator, and ensure that that the resources necessary for the provision of a quality child care service are available to the administrator so that she can carry out her responsibilities in an efficient and effective manner.

Public Relations

Owners and boards participate in public relations by promoting, rationalizing and positioning their child care service and their provision of a quality child care service. Public Relations involves speaking out in public about the quality of one's service and on policy or societal trends which will affect child care services and the provision of a quality child care system.

The purpose of providing a child care service is to provide a quality child care service. A quality child care service is defined as a program where the following are present for all those involved in the service –

- *The promotion of trusting, caring and co-operative relationships that respect the worth and uniqueness of the individual;*
- *Stimulation that encourages growth in the whole person; and*
- *Settings that are healthy and safe.*

Advocacy

Owners and boards have a responsibility to advocate with the government, the general public and the business community regarding the inherent value of child care. They advocate for recognition of the value of the contributions made by quality child care and early childhood practitioners, and for children's right to quality child care.

Legal Conduct

Owners and boards are responsible to ensure that all legal requirements including employment legislation, licensing regulations, business and incorporation laws are met in exercising their role and the provision of a quality child care service.

Ethical Conduct

Owners and boards have a responsibility to conduct themselves in an ethical manner in all of their responsibility areas and to uphold honest, prudent and ethical best practices in exercising their responsibility.

The process for exercising the responsibilities:

To address how owners and boards exercise their role in effectively providing a quality child care service, they articulate, communicate, monitor and evaluate. To *articulate*, they describe their role and how their direction, public relations and advocacy will be effective in achieving the provision of a quality child care service. They articulate how their conduct will be legal and ethical and how they will provide guardianship in achieving this purpose. In each of the six responsibility areas, owners and boards develop policies that outline how they will carry out their responsibility, and the operational parameters to guide the administrator in her role in implementing the policy. This is *communicated* in both a documented and oral format to those to whom they are accountable to and for whom they are accountable. They put systems in place to *monitor* their performance in relation to the policy and that of the administrator in implementing her operational parameters. They *monitor* their own performance in setting direction and public relations and advocacy actions. They *monitor* their conduct in a timely and effective manner to ensure that they observe legal sanctions, are ethical and that their guardianship role is effective. Using this monitoring information, they make provision to adjust the direction/ guardianship /public relations /advocacy/legal conduct/and ethical conduct policies, in a timely and effective manner for the continual improvement of the child care service. On a regular basis, owners and boards *evaluate* their performance and the performance of the administrator in relation to their respective roles in achieving the purpose of quality child care and meeting the conditions of their policies. The policies are evaluated and revised on a regular basis.

These six areas of responsibility and the process they use in exercising their responsibilities describe the role of an owner or board. Each of the areas is related to each of the other areas, because together they represent the role. For instance – direction is affected by legal conduct in setting the floor of quality for the service; public relations and advocacy is influenced by direction in determining what is promoted and lobbied for; legal and ethical conduct is influenced by guardianship in the resources provided and how they are provided; and guardianship is affected by direction in the programs and services that are provided to clients. In maximizing a child care service, all of the areas have to be articulated, communicated, monitored and evaluated. In making the responsibilities visible, the interrelationships are recognized, making the maximization of the service more efficient and effective.

Direction

In maximizing child care services, owners and boards set the direction for the provision of a quality child care service. They define what the child care service intends to achieve from the provision of a quality child care service and who will benefit from it. To be effective in setting direction it is necessary for owners and boards to ensure that the direction created is reflective of the priorities of society. Those in society who benefit could include a multiple of individuals and agencies defined by a specific community or geographic area. This direction is documented in a direction policy that includes the responsibilities of the owner or board, how they will carry out their responsibilities for direction and how they will be effective in achieving the provision of a quality child care service in relation to their direction. The direction policy also includes operational parameters that describe and document the responsibilities of the administrator in relation to direction.

Owners and boards set the direction for the provision of a quality child care service, defining what the child care service intends to achieve and for whom.

Owners and Boards must ensure that current research and literature and the provincial and territorial acts governing the licensing of child care facilities in Canada is reflected in the direction created. The latter defines the minimum standards that must be maintained to operate a child care service. These standards or rules are… "consensus on those acceptable minimum standards of care critical to the protection of children… set as high as the public will tolerate"(Koch, 1998). However, as reported in the You Bet I Care! study (Goelman et al, 2000), child care services that simply comply to the minimum standards as regulated by child care facilities licensing acts across Canada do not adequately stimulate children's development, but simply care for the custodial needs of children. Since society, which benefits from the provision of a quality child care service, has indicated a priority to improve positive outcomes for children 0 – 6 (Early Childhood Development Communiqué, 2000) and research shows that quality child care contributes to children's social, emotional, physical, and intellectual development, child care services have to be built on a direction that reflects current research, literature and societal policy and aims to provide quality child care.

With their responsibilities, reason and actions articulated, owners and boards develop operational parameters for their administrator to be included as part of their direction policy. The administrator is responsible to develop and implement daily programs and services that further the direction and facilitate the provision of a quality child care service.

The owner or board *communicates* their direction policy to those to whom they are responsible, and to those they are responsible for, choosing what aspects of the policy are relevant to communicate. They choose the messages to be communicated, and the kind of methods and media that will be most effective. To be effective in their communication they ensure that their communication is understandable and accessible. Communicating to those for whom they are responsible, i.e. the administrator and through her, the staff, in a manner that is accessiblee and easily understood is critical to create a collective understanding and avoid actions that are at cross-purposes.

With the direction policy, including operational parameters articulated and communicated, owners and boards *monitor* the effectiveness of the direction policy and their effectiveness in achieving what is intended to be achieved for those who they intended to benefit in their provision of a quality child care service. Indicators of success in achieving their direction for both the owner or board and administrator are identified. All indicators relate to how effective the owner or board and administrator is in their responsibilities in achieving the direction. Owners and boards are responsible to put in place a process to track these indicators, identifying what information is to be collected and documented, how often, who will monitor the information, what decisions will be made regarding the information and by whom. Communicating the direction and eliciting feedback from those to whom they are responsible and gaining knowledge from current research and literature regarding quality child care will serve as a means to continuously improve the direction policy and to evaluate their effectiveness of their provision of a quality child care service.

Owners and boards develop a regular and timely process to *evaluate* the overall effectiveness of their direction responsibility and those of the administrator, their and the administrator's performance in relation to the direction policy, and the direction policy itself. Information gathered in the monitoring as well as other information is used to conduct the evaluation. The evaluation is documented and shared with relevant individuals and groups. Adjustments and revisions are made to the policy so that it will contribute to the improvement of the quality of child care services.

I. Direction

Process	**Responsibility:** Direction
The Process: *How the owner or board realizes their responsibility.*	*The Responsibility:* *Owners and boards set the direction for the provision of a quality child care service, defining what the child care service intends to achieve and for whom.*
1) Articulate: a) Develop a policy for the responsibility area i)Describe and document the responsibilities of the owner or board in relation to the responsibility area.	What are the values that underlie your purpose, the provision of a quality child care service? What are your values in relation to the definition of a quality child care service: • The promotion of trusting, caring and co-operative relationships that respect the worth and uniqueness of the individual for all those involved in the service? • Stimulation that encourages growth in the whole person for all those involved in the service?

Process	**Responsibility:** Direction
	• Settings that are healthy and safe for all those involved in the service? What are your responsibilities in setting the direction for the provision of a quality child care service? What are your responsibilities in defining what your quality child care service intends to achieve from your provision of a quality child care service? What are your responsibilities in defining who will benefit from your quality child care service?
ii) Describe and document how the owner or board will be effective in achieving the provision of a quality child care service in relation to the responsibility area.	What do you wish to achieve in the provision of a quality child care service? How will you know that you are effective in setting direction? What do you wish to achieve from the promotion of trusting, caring and co-operative relationships that respect the worth and uniqueness of the individual? What do you wish to achieve from stimulation that encourages growth in the whole person? What do you wish to achieve from settings that are healthy and safe? Who in society do you hope benefits from your direction? How will you monitor your effectiveness in setting direction? How will you evaluate your effectiveness in setting direction?
iii) Describe and document how the owner or board will carry out their responsibilities in relation to this responsibility area?	What is your responsibility for ensuring that what you intend to achieve is achieved? How will you carry out your responsibilities? How does your responsibility for setting direction relate to the provision of a quality child care service? What information do you require?

Process	**Responsibility:** Direction
	Describe any conduct expectations that you will observe in exercising your direction responsibility.
b) Develop operational parameters i) Describe and document the responsibilities of the administrator in relation to this responsibility area.	What is the responsibility of the administrator in relation to the direction policy responsibilities? Describe any conduct expectations for the administrator that you require in relation to your direction policy. How will these operational parameters reflect your commitment to a quality child care service?
2) Communicate: a) Develop effective media, eg, policy documents, brochures, etc. to communicate the policy for this responsibility area.	What communication materials will you use to communicate this direction policy so that it is assessable and easily understood? What are your messages? What media will be most effective in communicating your direction? What resources will you allocate to develop these communications resources?
b) Communicate the policy for this responsibility area to those to whom the owner or board is responsible.	What will you communicate to those to whom you are responsible? What strategies will you use to communicate this direction policy to those to whom you are responsible? When will you communicate this direction policy to those to whom you are responsible? How will you know that your communication is understood?
c) Communicate the policy for this responsibility area to the administrator.	Whay will you communicate to your administrator? How will you communicate this direction policy to the administrator? When will you communicate this direction policy to the administrator? How will you know that your communication has been understood?
3) Monitor: a) Develop processes to monitor	How do you monitor your performance in

Process	**Responsibility:** Direction
the owner's or board's performance in carrying out its responsibilities in relation to this policy.	relation to defining what good is to be achieved and for whom? What information do you require? When will you monitor your performance?
b) Develop processes to monitor the administrator's performance in carrying out her responsibilities in relation to this policy's operational parameters.	How do you monitor the administrator's performance in carrying out her responsibilities in relation to the operational parameters of the direction policy? What information do you require? When will you monitor her performance? How will you collect the monitoring information? How will you use the monitoring information?
c) Develop systems to document the owner's or board's performance in relation to this policy.	What information will be collected for you to monitor your own performance in relation to direction? Who will collect the monitoring information? When will the information be monitored? Who will monitor the information? With whom will the monitoring information be shared? What monitoring information will be documented? How is the monitoring documented?
d) Develop systems to document the administrator's performance in relation to the policy's operational parameters.	What monitoring information will be documented? How is the monitoring documented? Who will collect the monitoring information? When will the information be monitored? Who will monitor the information? With who will the information be shared?
e) Describe how the monitoring will enable the owner or board to adjust the policy in a timely and effective manner for the continual improvement of the quality of the child care service.	How are decision made so that the monitoring information can inform the adjustment of the policy to increase its effectiveness? Who makes the decision? When are the decisions and adjustments made? How are decisions documented?

Process	**Responsibility:** Direction
4) Evaluate: a) Develop a regular and timely process to evaluate the performance of the owner or board in its purpose to provide a quality child care service in relation to this responsibility area.	How will you know you have been effective in setting direction? How will you know you have been effective in defining what is intended to be achieved? How will you know you have been effective in defining who benefits from your child care service? What are your indicators of success? When will they be evaluated? How will they be evaluated? Who needs to be involved in evaluating direction?
b) Develop a regular and timely process to evaluate the performance of the administrator in relation to the operational parameters for this responsibility area.	How will you evaluate the administrator's performance in implementing the operational parameters of the direction policy? When will you evaluate her performance? What monitoring information will you gather? What other information will you use? Who will conduct the evaluation? How will you use the evaluation? What actions will be taken as a result of the evaluation?
c) Document the evaluations.	How will you document your evaluation of the administrator's performance in relation to direction and her conduct regarding the operational parameters for the direction policy? How will you document your evaluation of your (owner or board) performance regarding your direction policy? What will be recorded in the evaluation? Who will have access to the documents?
d) Develop a regular and timely process to evaluate and revise the policy in this responsibility area as needed.	When will you evaluate and revise your direction policy? What information will you consider when evaluating the direction policy? How will you use the information gathered to evaluate the direction policy? What is the decision making process regarding revision of the direction policy? Who needs to be informed of revisions?

Overview of the aspects of incorporation legislation that have an effect on direction

Direction: *Clear goals and objectives, and planning*

In all forms of incorporation, how much attention is paid to development of goals, objectives and planning is influenced by the degree to which the provision of the child care services is the focus of the child care service. If operating a child care service is one of a number of aspects of the incorporated bodies operations there is a potential that less focus and attention will be paid to the child care service. An incorporated licensed operator (owner or board) which stipulates in its incorporating documents that its objectives is to operate a licensed child care service will be less likely to have other interests.

Direction: *Decision making and who makes the decisions*

Co-ops: at least 3, in some provinces anywhere from 5-10 minimum are responsible as directors, for setting goals and objectives, and planning.

- The members/board have an equal say in decision-making , i.e. one person, one vote at both the board and member level
- Co-op members and boards form either the consumers or the providers of the child care service. In the case of a consumer co-op the parents/guardians would be members and board. In a worker/producer co-op the members/board would be the child care workers providing the child care service.
- Co-op members also have a direct financial interest in the direction of the board as investors (share holders) providing the capital for the operation and as paying consumers of the child care services. In the case of the worker co-op the child care workers as co-op members are the investors.
- The development of the goals and objectives, and the planning must be accountable to at least three members/board members who have a direct interest in the child care service, its provision of services and its financial management.

Business Corporations: can have a minimum of one shareholder/director responsible for decision-making in the setting of the child care service direction.

- Where there is more than one shareholder the decision making is based on the amount invested by each share holder i.e., where one share holder has fifty shares and another has invested in twenty-five shares the shareholder with fifty shares gets fifty votes and twice as many votes as the share holder with twenty-five shares.
- Smaller business corporations are often more like single proprietorships where the licensed operator is an owner-administrator, with an interest in keeping the child care service viable to provide employment and income. In the case of larger corporations with larger capital investments and more share holders, the influence of shareholders with a primary interest in return on their investment increases. This has an effect on t he establishment of goals, objectives and planning.

Societies: (Non Profit child care services) have a minimum number of members to incorporate, such as five in Nova Scotia. The objectives are not for direct self-interest, i.e. they must be for "benevolent" objectives.

- Societies may not sell shares in the Society nor distribute capital or proceeds to members. Members therefore have no financial interests in the society (except perhaps, in some cases, as employees). This enables them to plan in the best interests of the society in its pursuance of the benevolent objectives.
- Societies are able to select board members based on their expertise interests etc. (rather than being tied to having shareholders, workers or consumers as board members).
- Societies are not accountable to investors or parties directly effected by the operation as consumers or workers. This provides them with the potential to set broader, longer-term objectives beyond the objectives of investors, clients of workers.
- Potentially, societies are able to develop a membership and a Board of Directors that represents all of the interests or "stakeholders" in the operation of the child care service e.g. parents, workers, experts in the field, community members, etc. But this is not stipulated by the Act. There is also the potential that the members of the society/board have no direct interest in the operations of the child care centre other than being members or directors. The decision making structure of the child care service can be determined by the licensed operator in the by-laws at the time of incorporation or the original by-laws can be modified by an extraordinary resolution.

Summary

- **Business corps** can have a narrow set of interests dominating decisions, objectives and planning. The acts allow for one person for incorporation, and when more investors come on board the larger investor has more voting power.
- **Co-operative** members are also investors, but they must also be participants in the operations (consumers or producer of the service). They have broader interests than simply as investors i.e.-consumers of the services (parents) or workers. Co-ops objectives and direction cannot be dominated by one or a group of shareholders but is democratic (one member one vote).
- **Societies** can be seen as having potentially the broadest interests as members can be appointed but they are not active in the actual day to day operations of the centre as is the case in a co-operative consumers and workers.

Guardianship

In maximizing child care services owners and boards in their role of guardianship are responsible to hire the administrator and monitor and evaluate her performance. They ensure that the resources necessary for the provision of a quality child care service are available to the administrator and that the materials, vehicles and structures are in place so that she can carry out her responsibilities in an efficient and effective manner. This guardianship is *articulated* in a guardianship policy that includes the responsibilities of the owner or board, how they will carry out their responsibilities for guardianship and how they will be effective in achieving the provision of a quality child care service in relation to their guardianship. The guardianship policy also includes operational parameters that describes and documents the responsibilities of the administrator in relation to guardianship.

Guardianship
Owners and boards hire, monitor and evaluate the administrator, and ensure that the resources necessary for the provision of a quality child care service are available to the administrator so that she can carry out her responsibilities in an efficient and effective manner.

In their guardianship responsibility owners and boards are responsible to hire an administrator that is qualified to carry out the daily operations of their child care service. The hiring of the administrator ensures that a qualified and experienced individual is hired, oriented, supported and evaluated in an ongoing manner. Ferguson (1997) identified the areas for which the administrator is responsible (Appendix A: Management Areas Grid). The Management Areas Grid includes the management areas of systems, policy, services and programs, legal and professional sanctions, planning and finances as they relate to her relationships with staff, families, owners/boards, facility and community. It clearly delineates the administrator's responsibilities. This grid is the basis for operational parameters articulated by the owner or board in their guardianship policy.

Owners and Boards *communicate* this guardianship policy to those, to whom they are responsible, and to those for whom they are responsible, choosing what aspects of the policy are relevant to communicate and to whom. They choose messages to be communicated, and the kind of methods and media that will be most effective. To be effective in their communication they ensure that their communication is understandable and accessible.

With the guardianship policy, including operational parameters, articulated and communicated owners and boards now *monitor* the effectiveness of their guardianship activities and of the guardianship policy. The indicators of success for both the owner or board and the administrator are identified. All indicators will relate to how the guardianship will relate to the improvement of the quality of the child care service. The relationship area of Licensed operator(owners/boards) in the Management Areas Grid (III, Appendix A) outlines the process that owners or boards can use to monitor and evaluate the administrator's effectiveness in her implementation of the operational

parameters of the guardianship policy. The administrator's performance may be monitored in a number of ways:

- Reports such as audited financial reports, enrollment figures, and outcomes of evaluation tools employed internally by staff such as Environment Rating Scales and Work Environment Scales;
- External audits such as annual financial reports and annual licensing inspection; and
- Internal inspection elicited by owners or boards to inspect areas such as policies and systems.

A process is put in place to track these indicators, identifying what information is to be collected and documented, how often, who will monitor, and what decisions will be made regarding the information and by whom. Decisions will be documented.

Owners and boards develop a regular and timely process to *evaluate* the overall effectiveness of their and the administrator's performance in relation their guardianship and the guardianship policy itself. Information collected in the monitoring process as well as other information is used to evaluate. The evaluation is documented and shared with relevant individuals and groups. Adjustments and revisions are made to the policy so that it will contribute to the improvement of the quality of the child care service. The revised policy is shared with relevant groups and individuals.

II. Guardianship

Process	**Responsibility:** Guardianship
The Process: *How the owner or board realizes their responsibility.*	*The Responsibility:* *Owners and boards hire, monitor and evaluate the administrator, and ensure that that the resources necessary for the provision of a quality child care service are available to the administrator so that she can carry out her responsibilities in an efficient and effective manner.*
1) Articulate: a) Develop a policy for the responsibility area i) Describe and document the responsibilities of the owner or board in relation to the responsibility area.	What is your responsibility for providing resources to meet present standards? What is your responsibility for providing resources for potential growth and innovation? What are your responsibilities in hiring the administrator? What are your responsibilities for orienting and supporting the administrator? What are your responsibilities in monitoring the administrator? What are your responsibilities in evaluating the administrator? What are your responsibilities for ensuring that materials, vehicles and structures are in place so that the administrator can carry out her responsibilities in an efficient and effective manner? What processes are in place for you to monitor and evaluate the administrator in regards to the Management Areas Grid (Appendix A)?
i) Describe and document how the owner or board will be effective in achieving the provision of a quality child care service in relation to the responsibility area.	What resources are necessary for the provision of a quality child care service? How do you make these available to the administrator? What process is in place to ensure that the administrator you hire is qualfied to carry out the daily operations of your child care service?

Process	**Responsibility:** Guardianship
	How will you be effective in monitoring the administrator in relation to the Management Areas Grid (Appendix A)? What do you monitor? What do you evaluate? How will you evaluate?
iii) Describe and document how the owner or board will carry out their responsibilities in relation to this responsibility area?	What processes are in place for you to hire the administrator? What administrator skills, knowledge and experience will ensure a quality child care service? How will you ensure that the resources are provided so that the provision of a quality child care service can be achieved? Describe any conduct expectations that you will observe in exercising your guardianship responibilities?
b) Develop operational parameters i) Describe and document the responsibilities of the administrator in relation to this responsibility area.	What are the administrator's responsibilities in regards to the Management Areas Grid (Appendix A)? How will these operational parameters reflect your commitment to a quality child care service? Describe any conduct expectations for the administrator that you will require in her carrying out the guardianship policy.
2) *Communicate:* a) Develop effective media, eg, policy documents, brochures, etc. to communicate the policy for this responsibility area.	What messages regarding the guardianship policy do you wish to communicate? To whom do you want to communicate? What media will be most effective? What resources will you allocate to develop these communications resources?
b) Communicate the policy for this responsibility area to those to whom the owner or board is responsible.	What will you communicate regarding the guardianship policy to those to whom you are responsible? When will you communicate? How will you communicate?

Process	**Responsibility:** Guardianship
c) Communicate the policy for this responsibility area to the administrator .	What will you communicate regarding the guardianship policy to those for whom you are responsible? When will you communicate? How will you communicate?
3) Monitor: a) Develop processes to monitor the owner's or board's performance in carrying out its responsibilities in relation to this policy.	How will you monitor your effectiveness in hiring the administrator? How will you monitor your effectiveness in monitoring the administrator? How will you monitor your effectiveness in evaluating the administrator? How will you monitor your effectiveness of providing the resources required to meet current and future needs? What information do you need to monitor your effectiveness in hiring, monitoring and evaluating the administrator? What information do you need to monitor your effectiveness in providing the resources required for current and future needs? How will the information be collected? Who will collect the information? Who will review the information? When will the information be monitored?
b) Develop processes to monitor the administrator's performance in carrying out her responsibilities in relation to this policy's operational parameters.	How will you monitor the administrator's performance in regards to the Management Areas Grid (Appendix A)? How will the information be collected? Who will collect the information? Who will review the information? When will the information be collected? What actions will take place in consideration of the monitoring information? How will actions be documented?
c) Develop systems to document the owner's or board's performance in relation to this policy.	What information will be collected for you to monitor your own performance in relation to guardianship? Who will collect the monitoring information? When will the information be monitored and by whom?

Process	**Responsibility:** Guardianship
	With who will the monitoring information be shared? What monitoring information will be documented? How is the monitoring documented?
d) Develop systems to document the administrator's performance in relation to the policy's operational parameters.	What monitoring information will be documented? How is the monitoring documented? Who will collect the monitoring information? When will the information be monitored? Who will monitor the information? With who will the information be shared?
e) Describe how the monitoring will enable the owner or board to adjust the policy in a timely and effective manner for the continual improvement of the quality of the child care service.	How are decision made so that the monitoring information can inform the adjustment of the policy to increase its effectiveness? Who makes the decision? When are the decisions and adjustments made? How are decisions documented?
4) Evaluate: a) Develop a regular and timely process to evaluate the performance of the owner or board in its purpose to provide a quality child care service in relation to this responsibility area.	How will you know how effective your guardianship policy of the child care service has been? When will you evaluate your performance regarding the guardianship policy? What information will you gather? How will you use the information on effectiveness to improve your child care service?
b) Develop a regular and timely process to evaluate the performance of the administrator in relation to the operational parameters for this responsibility area.	How will you evaluate the administrator's performance in her carrying out the operational parameters of the guardianship policy? How will you evaluate the administrator's performance in relation to the Management Areas Grid (Appendix A)?
c) Document the evaluations.	How will you document your evaluation of the administrator's performance in relation to the Management Areas Grid (Appendix A)? How will you document your evaluation of the administrator's conduct regarding the operational parameters for the guardianship policy?

Process	**Responsibility:** Guardianship
	How will you document your evaluation of your (owner or board) performance regarding your guardianship policy? Who will have access to the documents? What will be recorded in the evaluation?
d) Develop a regular and timely process to evaluate and revise the policy in this responsibility area as needed.	When will you evaluate and revise your guardianship policy? What information will you consider when evaluating the guardianship policy? How will you use the information gathered to evaluate the guardianship policy? What is the decision making process regarding revision of the guardianship policy? Who needs to be informed of revisions?

Overview of the aspects of incorporation legislation that have an effect on guardianship:

Incorporated licensed operators with operations in another field may tend to balance their financial operations and planning with the finances of the other non-child care operations. This can have positive or negative implications for guardianship in that funds that are raised in the other operations can be directed to the child care service when they are needed. On the other hand, funds can be taken from the revenue generated from the child care services and directed to other programs.

Guardianship: *Raising Capital for Potential Growth*

Business corporations are the best suited to raise funds for investments.

- They can provide investors a return on investment proportionate with the investment. The dividend is stipulated at the discretion of the Board of Directors and drawn from the income.
- They provide voting rights corresponding to the amount invested.

Co-operatives are limited to raising capital from members or lending agencies.

From members:

- there is no incentive to invest in the co-op because the co-op is usually only able to provide returns based on patronage of the co-op rather than the amount invested.
- the capital available to the co-op is limited to the resources the membership is willing to invest.
- the capital is usually fairly low and determined by the lowest common amount based on call by the Board of Directors, as the members are unlikely to invest if they are not required to, given the limited return.

Loans from Financial Institutions:
Co-ops can raise funds from banks etc. but banks require interest principle payments regardless of the co-ops short and long- term cash flow circumstances. This in turn can take funds away from operations.

Non Profit Societies are limited to and dependent on raising funds from lenders, donations and operations.

***Guardianship:** Present Needs*
In the current context of under-funding, wages to child care workers and high quality are squeezed between maintaining the standards of the Child Care Facilities Act and the limited funding.

Business corporations:
- while businesses are structured to accommodate investments, child care services generally provide insufficient return on investments to attract substantial investments.
- the child care service's structure enables it to raise capital for development, but having raised the capital it must also provide a return out of operations to the investor which limits the funds available to operations.
- if the provision were to become more profitable i.e. better funded, there is the potential that business corps might face pressure from investors/owners to provide return (dividends) rather than re-invest income in the child care service to raise the quality of services.

Co-operatives: co-ops are based on the principle that the members pool their resources and raise the capital from among the members this provides a limited pool of investors.

- Worker co-ops may pressure to increase salaries and dividends rather invest in other aspects or providing a lower cost service to parents
- Consumer co-ops may tend to limit salaries in preference for lower cost services to members/parents

Societies are unable to take on any investors, be they members or otherwise.

Public Relations

In maximizing child care services, owners and boards have a responsibility to engage in public relations. A public relations policy is *articulated* to outline their responsibilities for public relations, how public relations will have an impact on their delivery of a quality child care service and what they will do to carry out this responsibility. To develop the policy, they describe how their service is a quality service and why their service is a quality service. This means that owners and boards are knowledgeable on current research and literature regarding quality child care service indicators and how their child care service addresses the indicators in a manner that maximizes the service. Owners and boards represent their child care service to the community. This may be to the general public, funding agencies or government, to promote their service or for fundraising. Owners and boards identify what they hope to achieve in their public relations activities and from there, their targets, and the most effective methods and media to get their point across.

Public Relations
Owners and boards participate in public relations by promoting, rationalizing and positioning their child care service and their provision of a quality child care service. Public Relations involves speaking out in public about the quality of one's service and on policy or societal trends which will affect child care services and the provision of a quality child care system.

With their responsibilities, reasons and actions articulated, owners and boards develop operational parameters for their administrator. The administrator engages in public relations which are related to the daily operations of the child care service, such as advertisements for staff and program vacancies, addresses to students who may be field practice placements, fundraising for a program component such as playground equipment. In addition, exceptional circumstances may arise where the administrator would engage in public relations around a crisis like flooding or fire, response to a government action or policy, or speaking out in a public forum. The public relations policy contains the operational parameters for the administrator, the expectations that the owner or board has for her when she engages in public relations. It will answer questions such as "How will the child care service be represented by her?" "What can she say and what can she not say?" These are clearly articulated and documented in the public relations policy.

The owner or board *communicates* their public relations policy to those to whom they are responsible, and to those for whom they are responsible, choosing what aspects of the policy are relevant to communicate. They choose the messages to be communicated, and the kind of methods and media that will be most effective. They ensure that their communication is understood and accessible.

With the public relations policy, including operational parameters, articulated and communicated, owners and boards now *monitor* the effectiveness of the public relation activities and of the public relations policy, and societal trends that may affect the child care service. The indicators of successful public relations initiatives for both the board and the administrator are identified. All indicators will relate to how the public relations will

relate to the improvement of the quality of the child care service. A process is put in place to track these indicators, identifying what information is to be collected and documented, how often, who will monitor, and what decisions will be made regarding the information and by whom. Decisions will be documented.

Owners and boards develop a regular and timely process to *evaluate* the overall effectiveness of their public relations initiatives and those of the administrator, their and the administrator's performance in relation to the public relations policy, and the public relations policy itself. Information collected in the monitoring process as well as other information is used to evaluate. The evaluation is documented and shared with relevant individuals and groups. Adjustments and revisions are made to the policy so that it will contribute to the improvement of the quality of child care services. The revised policy is communicated to relevant groups an individuals.

III. Public Relations

Process	**Responsibility:** Public Relations
The Process: *How the owner or board realizes their responsibility.*	*The Responsibility:* *Owners and boards participate in public relations by promoting, rationalizing and positioning their child care service and their provision of a quality child care service. Public Relations involves speaking out in public about the quality of one's service and on policy or societal trends which will affect child care services and the provision of a quality child care system.*
1) Articulate: a) Develop a policy for the responsibility area i)Describe and document the responsibilities of the owner or board in relation to the responsibility area.	Reflect upon your child care service. How is your service a quality child care service? What is your responsibility in promoting your child care service? What aspects of your service will you highlight in your public relations activities? What will be your messages? How will your public relations activities increase your effectiveness in achieving improved quality child care? Who will be the targets of your public relations? What do you wish to achieve by engaging in public relations?

Process	**Responsibility:** Public Relations
	What aspects of your service will be affected by your public relations? What kind of fundraising will you engage/not engage in? When will you engage in fundraising? What will be your role in fundraising?
ii) Describe and document how the owner or board will be effective in achieving the provision of a quality child care service in relation to the responsibility area.	How do your public relations responsibilities relate to the delivery of a quality child care service? How will you know that you are effective in your public relations activities? What will you monitor in relation to your public relations activities? How will you evaluate your public relations activities? What resources will you commit to public relations?
iii) Describe and document how the owner or board will carry out their responsibilities in relation to this responsibility area?	When will you carry out your public relations responsibilities? Describe any conduct expectations that you will observe in your public relations responsibilities. How much time will you commit to public relations?
b) Develop operational parameters i) Describe and document the responsibilities of the administrator in relation to this responsibility area.	What types of public relations activities will the administrator engage in carrying out her daily activities? (e.g. advertising vacancies, fundraising activities etc.) What operational parameters will you provide for her in carrying out these activities? What exceptional types of public relations will the administrator engage in? (e.g. crises, suspected child abuse, receipt of a large monitory donation, etc.) What operational parameters will you provide for her in carrying out these activities? How do these operational parameters reflect your commitment to a quality child care service?

Process	**Responsibility:** Public Relations
	How will your child care service's effectiveness be represented honestly in providing quality child care? What operational parameters have to be communicated to the administrator regarding her public relations activities? What can be said and what cannot be said? Describe any conduct expectations for the administrator that you will require in her public relations responsibilities.
2) Communicate: a) Develop effective media, eg, policy documents, brochures, etc. to communicate the policy for this responsibility area.	What messages will be communicated? To whom will the message(s) be communicated? What media will be both cost and results effective in your and the administrator's public relations responsibilities? What resources will you allocate to develop these communications resources?
b) Communicate the policy for this responsibility area to those to whom the owner or board is responsible.	What parts of your public relations policy have to be communicated to those to whom you are responsible? How will you communicate this policy? How will you ensure that those with whom you communicate understand this policy?
c) Communicate the policy for this responsibility area to the administrator and through her, the staff.	What owner or board public relations parameters have to be communicated to the administrator? How will you communicate this to the administrator? How will you ensure that those with whom you communicate understand this policy?
3) Monitor: a) Develop processes to monitor the owner's or board's performance in carrying out its responsibilities in relation to this policy.	What measures of success will be collected as regards your public relations activities? When will they be collected? When will you monitor your effectiveness in carrying out your public relations activities? How will you monitor the effect that your public relations activities have on the quality of your child care service?

Process	**Responsibility:** Public Relations
b) Develop processes to monitor the administrator's performance in carrying out her responsibilities in relation to this policy's operational parameters.	What systems are in place to monitor the ongoing public relations initiatives of the administrator? What information will you collect? How will the information be collected? When will you collect the information? Who will collect the information? How often will you review the information?
c) Develop systems to document the owner's or board's performance in relation to this policy.	What monitoring information will be documented? How is the monitoring documented? Who will collect the monitoring information? When will the information be monitored? Who will monitor the information? With who will the monitoring information be shared?
d) Develop systems to document the administrator's performance in relation to the policy's operational parameters.	What monitoring information will be documented? How is the monitoring documented? Who will collect the monitoring information? When will the information be monitored? Who will monitor the information? With who will the information be shared?
e) Describe how the monitoring will enable the owner or board to adjust the policy in a timely and effective manner for the continual improvement of the quality of the child care service.	How are decision made so that the monitoring information can inform the adjustment of the policy to increase its effectiveness? Who makes the decision? When are the decisions and adjustments made? How are decisions documented? Who needs to be informed of any adjustments?
4) *Evaluate:* a) Develop a regular and timely process to evaluate the performance of the owner or board in its purpose to provide a quality child care service in relation to this responsibility area.	How will you know how effective promotions of your child care service have been? When will you evaluate your performance regarding the public relations policy? What information will you gather? How will you use the information on effectiveness to improve your child care service and your public relations efforts?

Process	**Responsibility:** Public Relations
b) Develop a regular and timely process to evaluate the performance of the administrator in relation to the operational parameters for this responsibility area.	How will you evaluate the administrator's performance in engaging in public relations? When will you evaluate the administrator's performance in relation to public relations? How will you evaluate her conduct in relation to the operational parameters of the public relations policy? What information will you gather? What methods will you use to gather information? Who will be involved in the provision of the information? How will the information be considered? What actions will be taken as a result of the evaluation? With who will the information be shared?
c) Document the evaluations.	How will you document your evaluation of the administrator's performance in relation to public relations? How will you document your evaluation of the administrator's conduct regarding the public relations policy? How will you document your evaluation of your (owner or board) performance regarding your public relations policy? Who will have access to the documents? What will be recorded in the evaluation?
d) Develop a regular and timely process to evaluate and revise the policy in this responsibility area as needed.	When will you evaluate and revise your public relations policy? What information will you consider when evaluating the public relations policy? How will you use the information gathered to evaluate the public relations policy? What is the decision making process regarding revision of the public relations policy? Who needs to be informed of revisions?

Advocacy

All levels of society and the political structure have a commitment to the continual improvement of positive outcomes for children 0-6 and an interest and investment in quality child care. Owners and boards have a responsibility to advocate with the government, the general public and the business community regarding the inherent value of child care. They advocate for recognition of the value of the contributions made by quality child care and early childhood practitioners, and for children's right to quality child care.

Advocacy
Owners and boards have a responsibility to advocate with the government, the general public and the business community regarding the inherent value of child care. They advocate for recognition of the value of the contributions made by quality child care and early childhood practitioners, and for children's right to quality child care.

In maximizing child care services, owners and boards have a responsibility to advocate for a quality child care delivery system and their part in providing a quality child care service. An advocacy policy is *articulated* to outline their responsibilities for advocacy, how advocacy will have an impact on their delivery of a quality child care service and what they will do to carry out this responsibility. To develop the policy, they identify the societal and policy trends that have an impact on their service. This means that owners and boards are knowledgeable regarding the child care sector's actions to recognize and advance the profession and how these and other trends have an impact on the quality of their child care service. Owners and boards identify what they hope to achieve in their advocacy activities and from there their targets, and the most effective methods and media to get their point across.

With their responsibilities, reasons and actions articulated, owners and boards articulate operational parameters for their administrator in her advocacy activities where she represents the child care service and how they will support their administrator and staff in advocacy actions on behalf of the profession. The advocacy policy contains the operation parameters for the administrator, the expectations that the owner or board has for her when she engages in advocacy on behalf of the child care service, how the child care service will be represented by her and what she can say and what she can not say. These are clearly articulated and documented in the operational parameters of the advocacy policy.

The owner or board *communicates* their advocacy policy to those to whom they are responsible, and to those for whom they are responsible, choosing what aspects of the policy are relevant to communicate. They choose the messages to be communicated, and the kind of methods and media that will be most effective. They ensure that their communication is understood.

With the advocacy policy, including operational parameters, articulated and communicated owners and boards now *monitor* the effectiveness of the advocacy activities and of the policy and societal trends that may affect the child care service. The indicators of successful advocacy initiatives for both the owner or board and the

administrator are identified. All indicators will relate to how the advocacy will relate to the improvement of the quality of the child care service. A process is put in place to track these indicators, identifying what information is to be collected and documented, how often, who will monitor, and what decisions will be made regarding the information and by whom. Decisions will be documented.

Owners and boards develop a regular and timely process to *evaluate* the overall effectiveness of their advocacy initiatives and those of the administrator, their and the administrator's performance in relation to the advocacy policy, and the advocacy policy itself. Information that is gathered in the monitoring process as well as other information is used to evaluate. The evaluation is documented and shared with relevant individuals and groups. Adjustments and revisions are made to the policy so that it will contribute to the improvement of the quality of child care services. Revisions are shared with relevant individuals and groups.

IV. Advocacy

Process	**Responsibility:** Advocacy
The Process: *How the owner or board realizes their responsibility.*	*The Responsibility:* ***Owners and boards have a responsibility to advocate with the government, the general public and the business community regarding the inherent value of child care. They advocate for recognition of the value of the contributions made by quality child care and early childhood practitioners, and for children's right to quality child care.***
1) Articulate: a) Develop a policy for the responsibility area i) Describe and document the responsibilities of the owner or board in relation to the responsibility area.	What aspects of policy and societal trends have an effect on how the value of quality child care is represented? What are your responsibilities in advocating for a quality child care system? How will your advocacy activities increase your effectiveness in achieving your purpose of providing a quality child care service? How will your advocacy activities have an impact on your child care service's relationship to society and your responsibility to society? How does the focus of your advocacy have an impact on your child care service?

Process	**Responsibility:** Advocacy
ii) Describe and document how the owner or board will be effective in achieving the provision of quality child care policy, what messages will you use in service in relation to the responsibility area.	In what forms of advocacy will you participate? When will you advocate, under what conditions? Considering the purpose and your direction policy, what messages will you use in your advocacy? How will you monitor your advocacy activities? How will you monitor the effectiveness of your advocacy activities? How will you evaluate your advocacy activities?
iii)Describe and document how the owner or board will carry out their responsibilities in relation to this responsibility area?	When will you advocate? Describe any conduct expectations that you will observe in your advocacy activities. How will you prioritize your advocacy activities?
b) Develop operational parameters i) Describe and document the responsibilities of the in relation to this responsibility area.	How will you support/not support your administrator in her advocacy actions on behalf of the child care profession? What actions will you support, why and how? What operation parameters will you provide for the administrator for when she advocates as a representative of your child care service? How do these operational parameters reflect your commitment to a quality child care service? Describe any conduct expectations for the administrator that you will require in advocacy responsibilities.
2) *Communicate:* a) Develop effective media, eg, policy documents, brochures, etc. to communicate the policy for this responsibility area.	How will you speak out for quality child care in a timely and effective manner? What messages will you use? To whom will you target your messages? Who will be your targets for ongoing advocacy activities? What media are most effective for what messages and what targets?
b) Communicate the policy for this responsibility area to those to whom the owner or board is responsible.	What parts of the owner or board advocacy policy have to be communicated to those to whom you are responsible? How will you communicate this policy?

Process	**Responsibility:** Advocacy
ii) Describe and document how the owner or board will be effective in achieving the provision of quality child care policy, what messages will you use in service in relation to the responsibility area.	In what forms of advocacy will you participate? When will you advocate, under what conditions? Considering the purpose and your direction policy, what messages will you use in your advocacy? How will you monitor your advocacy activities? How will you monitor the effectiveness of your advocacy activities? How will you evaluate your advocacy activities?
iii)Describe and document how the owner or board will carry out their responsibilities in relation to this responsibility area?	When will you advocate? Describe any conduct expectations that you will observe in your advocacy activities. How will you prioritize your advocacy activities?
b) Develop operational parameters i) Describe and document the responsibilities of the in relation to this responsibility area.	How will you support/not support your administrator in her advocacy actions on behalf of the child care profession? What actions will you support, why and how? What operation parameters will you provide for the administrator for when she advocates as a representative of your child care service? How do these operational parameters reflect your commitment to a quality child care service? Describe any conduct expectations for the administrator that you will require in advocacy responsibilities.
2) *Communicate:* a) Develop effective media, eg, policy documents, brochures, etc. to communicate the policy for this responsibility area.	How will you speak out for quality child care in a timely and effective manner? What messages will you use? To whom will you target your messages? Who will be your targets for ongoing advocacy activities? What media are most effective for what messages and what targets?
b) Communicate the policy for this responsibility area to those to whom the owner or board is responsible.	What parts of the owner or board advocacy policy have to be communicated to those to whom you are responsible? How will you communicate this policy?

Process	**Responsibility:** Advocacy
	Who will monitor the information? With who will the monitoring information be shared?
d) Develop systems to document the administrator's performance in relation to the policy's operational parameters.	How will monitoring information be documented? What monitoring information will be documented? Who will collect the monitoring information? When will the information be monitored? Who will monitor the information? With who will the information be shared?
e) Describe how the monitoring will enable the owner or board to adjust the policy in a timely and effective manner for the continual improvement of the quality of the child care service.	How will the monitoring information be used to measure the effectiveness of the advocacy policy? How are decisions made so that the monitoring information can inform the adjustment of an activity and the advocacy policy to increase their effectiveness? Who makes the decision? When are the decisions and adjustments made? How are decisions documented? How will monitoring the policy be documented?
4) Evaluate: a) Develop a regular and timely process to evaluate the performance of the owner or board in its purpose to provide a quality child care service in relation to this responsibility area.	What policy and societal trends have affected your delivery of a quality child care service? What do you need to do to protect your service? What do you need to improve your service? What barriers and opportunities are present? How effective are your advocacy actions in affecting your delivery of a better quality child care service then you provide now? How can you address the opportunities and barriers that present themselves as a result of your advocacy actions?
b) Develop a regular and timely process to evaluate the performance of the administrator in relation to the operational parameters for	How will you evaluate the administrator's performance in engaging in advocacy activities on behalf of your child care service? When will you evaluate the administrator's performance in relation to advocacy for the

Process	**Responsibility:** Advocacy
this responsibility area.	profession? What information will you gather? What methods will you use to gather information? Who will be involved in the provision of the information? How will the information be considered? What actions will be taken as a result of the evaluation? Who makes what decision? With who will the information be shared?
c) Document the evaluations.	How will you document your evaluation of the administrator's performance in relation to the operational parameters of the advocacy policy? How will you document your evaluation of your (owner or board) performance regarding the advocacy policy? Who will have access to the documents? What actions will be recorded in the evaluation?
d) Develop a regular and timely process to evaluate and revise the policy in this responsibility area as needed.	When will you evaluate and revise your advocacy policy? What information will you consider when evaluating your advocacy policy? How will you use the information to evaluate your policy? What is the decision making process regarding revision of the advocacy policy? Who makes the decision? How is it documented? Who needs to be informed of revisions?

Overview of the aspects of incorporation legislation that have an effect on Public Relations and Advocacy:

Marketing services to increase clients is always susceptible to abuse. No form of incorporation predisposes a licensed operator to such abuse.

Legal Conduct

Owners and Boards in all their responsibilities have legal obligations determined by the Act and regulations governing their method of incorporation, the operation of a child care facility, employment legislation and other acts that regulate business practices. (Appendix B provides a brief overview of the incorporation acts, and where applicable the child care facilities acts where it relates to incorporation.) To ensure compliance with its legal responsibilities owners and boards must be knowledgeable about what is needed to ensure compliance with the Acts and legislation as they relate to the child care license holder.

Legal Conduct
Owners and boards are responsible to ensure that all legal requirements including employment legislation, licensing regulations, business and incorporation laws are met in exercising their role and the provision of a quality child care service.

The licensing standards within the child care facilities acts are minimum standards required in order to provide a legal child care service. Stevens (1996) describes what licensing acts contain.

> "Licensing acts are to prevent the incidence (or shorten the exposure or duration) of predictable risks of harm commonly seen in group settings... for children...there are many such risks in several broad risk categories... such as:
>
> - safety hazards related to the physical plant and program activities... e.g. fires, building hazards, strangulation related to improper precautions, insufficient staffing and inadequate supervision etc...;
> - health hazards related to the spread of infectious diseases and environmental risks... e.g., food prep, body waste handling, medication errors etc...;
> - developmental impairment e.g. failure to provide for growth and well-being in the basic spheres of development, under stimulation etc..."
>
> (Stevens, 1996)

In maximizing child care child care services, owners and boards are responsible to provide quality child care above minimum standards. While this floor of legal liabilities has to be met, there is a moral obligation to provide quality child care services above that floor. The National Children's Agenda and the Early Childhood Development Communiqué (2000) are society's articulation of this moral commitment to children.

The individuals and groups to which owners and boards are accountable differ with non profit, co-operative and private incorporation. The child care service incorporated as a non profit entity is responsible to the community to carry out its goals and objectives. All profits must be reinvested into the community for the public good. Co-operatives are responsible to its members and all profits go to the members either in cash or services. A privately incorporated entity is responsible to its shareholders, the stakeholders that have invested in the child care service. Shareholders decide how profits will be used. Entities that are sole proprietorships, requiring only registration as a business and legislation related to business practices, are accountable to themselves. How and for whom profits can be utilized has been the cause of much tension within the child care sector.

A commitment to positive outcomes for children 0-6 has been expressed as a societal value through the Early Childhood Development Communiqué. The provision of a quality child care service being articulated in the objects of the entity's charter can be a condition in the Child Care Facilities Act, in order to be licensed to operate a child care service.

In maximizing child care services, owners and boards have a responsibility to ensure that all legal requirements including employment, licensing, business practices and incorporation laws, acts and regulations are met. A legal conduct policy is *articulated* to outline their responsibilities for legal conduct, how their legal conduct will have an impact on their delivery of a quality child care service and what they will do to carry out this responsibility. To develop the policy, they identify the legal liabilities that have to be observed in order to conduct their child care service and those that will have an impact on their service. Owners and boards identify what they hope to achieve with their legal conduct policy, conditions that activate the policy, and how they will conduct themselves in exercising the policy. The policy articulates how their legal conduct will have an impact on the quality of their child care service.

With their responsibilities, reasons and actions articulated, owners and boards articulate operational parameters for their administrator in her legal conduct. The legal conduct policy contains the operation parameters for the administrator, the expectations that the owner or board has for her legal conduct, how the child care service will be represented by her and what she can say and what she can not say. These are clearly articulated and documented in the legal conduct policy.

The owner or board *communicates* their legal conduct policy to those to whom they are responsible, and to those for whom they are responsible, choosing what aspects of the policy are relevant to communicate. They choose the messages to be communicated, and the kind of methods and media that will be most effective. They ensure that their communication is understood.

With the legal conduct policy, including operational parameters, articulated and communicated, owners and boards now *monitor* the effectiveness of their legal conduct and of the policy. The indicators of successful compliance of legal sanction initiatives for both the owner or board and the administrator are identified. All indicators will relate to how the legal conduct will relate to the improvement of the quality of the child care service. A process is put in place to track these indicators, identifying what information is to be collected and documented, how often, who will monitor, and what decisions will be made regarding the information and by whom. Decisions will be documented.

Owners and boards develop a regular and timely process to *evaluate* the overall effectiveness of their legal conduct and that of the administrator, their and the administrator's performance in relation to the legal conduct policy, and the legal conduct policy itself. Information that is gathered in the monitoring process as well as other information is used to evaluate. The evaluation is documented and shared with relevant individuals and groups. Adjustments and revisions are made to the policy so that it will contribute to the improvement of the quality of child care services.

V. Legal Conduct

Process	**Responsibility:** Legal Conduct
The Process: *How the owner or board realizes their responsibility.*	*The Responsibility:* *Owners and boards are responsible to ensure that all legal requirements including employment legislation, licensing regulations, business and incorporation laws are met in exercising their role and the provision of a quality child care service.*
1) Articulate: a) Develop a policy for the responsibility area i) Describe and document the responsibilities of the owner or board in relation to the responsibility area.	What are the legal responsibilities that you have in relation to the acts governing licensing your child care service, incorporation, employment and business practices? How will you ensure that your policies are not in contravention of the acts and regulations for which you are accountable? How does your legal conduct relate to the purpose of providing a quality child care service? What systems are in place to activate your legal conduct policy? What conditions would activate the use of your legal policy? When will legal advice be sought? How will decisions regarding legal conduct be documented?
ii) Describe and document how the owner or board will be effective in achieving the provision of a quality child care service in relation to the responsibility area.	How does your legal conduct relate to your provision of a quality child care service? What systems are in place to monitor your legal conduct? What systems are in place to evaluate your legal conduct? How will you document your monitoring activities? How will you document your evaluations?
iii)Describe and document how the owner or board will carry out their	Describe your process for assessing the legal liability in all of your responsibility areas. How will you document that you have

Process	**Responsibility:** Legal Conduct
responsibilities in relation to this responsibility area?	exercised your legal conduct responsibility in an honest and timely manner? Describe any conduct expectations that you will observe in exercising your legal conduct responsibility.
b) Develop operational parameters i) Describe and document the responsibilities of the administrator in relation to this responsibility area.	What areas will require legal consultation? When will the administrator use legal counsel? What types of activities requiring legal consideration will the administrator engage in while carrying out her daily activities e.g. licensing, facility changes, contracts, etc.? What operational parameters will you provide for her in these instances? What exceptional circumstances may require legal counsel/opinion e.g. accusations of child abuse, flooding, etc. What operational parameters will you provide for her to observe should such circumstances arise? How will these operational parameters reflect the owner's or board's commitment to quality child care? Describe any conduct expectations for the administrator that you will require in her legal conduct responsibilities.
2) *Communicate:* a) Develop effective media, eg, policy documents, brochures, etc. to communicate the policy for this responsibility area.	What information for your legal conduct policy will be communicated? What media will be most effective in communicating these aspects?
b) Communicate the policy for this responsibility area to those to whom the owner or board is responsible.	What parts of your legal conduct policy have to be communicated to those to whom you are responsible? How will you communicate this policy? How will you ensure that those with whom you communicate understand this policy? How will you ensure confidentiality?
c) Communicate the policy for this responsibility area to the administrator and through her,	What parts of the owner or board legal conduct policy have to be communicated to your administrator?

Process	**Responsibility:** Legal Conduct
the staff.	How will you communicate this policy? How will you ensure that those with whom you communicate understand this policy? How will you ensure confidentiality?
3) Monitor: a) Develop processes to monitor the owner's or board's performance in carrying out its responsibilities in relation to this policy.	How will you monitor your compliance with legal obligations in relation to all of the responsibility areas? What information do you need to collect to measure your compliance with legal obligations in all of the responsibility areas? What information will you collect? When will you collect the information? Who will collect the information?
b) Develop processes to monitor the administrator's performance in carrying out her responsibilities in relation to this policy's operational parameters.	What systems are in place to monitor the legal conduct of the administrator? What information will you collect? Who will collect the information? How often will you review the information? What measures are in place to respond to the administrator when exceptional circumstances may require legal advice? How can the administrator initiate this dialogue? How can you initiative this dialogue?
c) Develop systems to document the owner's/board's performance in relation to this policy.	What monitoring information will be documented? How is the monitoring documented? Who will collect the monitoring information? When will the information be monitored? Who will monitor the information?
d) Develop systems to document the administrator's performance in relation to the policy's operational parameters.	What monitoring information will be documented? How is the monitoring documented? Who will collect the monitoring information? When will the information be monitored?
e) Describe how the monitoring will enable the owner or board to adjust the policy in a timely and effective manner for the continual improvement of the	How are decision made so that the monitoring information can inform the adjustment of the activity to increase its effectiveness? Who makes the decision? When are the decisions and adjustments made?

Process	**Responsibility:** Legal Conduct
quality of the child care service.	With who will the monitoring information be shared? How are decisions documented?
4) Evaluate: a) Develop a regular and timely process to evaluate the performance of the owner or board in its purpose to provide a quality child care service in relation to this responsibility area.	How will you evaluate you legal conduct? What monitoring information will you use? What other information do you need? When will you evaluate? How will you use the evaluation? With who will the evaluation be shared? How will you use the evaluation information to improve your quality of service?
b) Develop a regular and timely process to evaluate the performance of the administrator in relation to the operational parameters for this responsibility area.	How will you evaluate the administrator's performance in implementing her operational parameters for legal conduct? When will you evaluate the administrator's performance in relation to her operational parameters in the legal conduct policy? What monitoring information will you use? What other information will you require? What methods will you use to gather information? Who will be involved in the provision of the information? How will the information be considered? What actions will be taken as a result of the evaluation?
c) Document the evaluations.	How will you document the evaluation of the administrator's performance in relation to her conduct regarding the legal conduct policy? How will you document the evaluation of your (owner or board) performance regarding your legal conduct policy? What actions will be recorded in the evaluation? Who will have access to the documents?
d) Develop a regular and timely process to evaluate and revise the policy in this responsibility area as needed.	When will you evaluate and revise your legal conduct policy? What information will you consider when evaluating your legal conduct policy?

Process	**Responsibility:** Legal Conduct
	How will you use the information to evaluate your policy? What is the decision making process regarding revision of the legal conduct policy? Who needs to be informed of revisions?

Ethical Conduct

Owners and boards have a responsibility to conduct themselves in an ethical manner in all of their responsibilities. Many decisions that owners and boards will have to make will have ethical components. Decisions with ethical components involve choosing the right action in situations in which the welfare of people is at stake. These decisions are based on one's ideas about how people ought to behave, how we ought to treat one another, and what one's obligations are to people. When faced with a decision the following questions (Griffin & Ricks, 1996) can help in determining if it has ethical components:

- Is anyone's welfare at stake?
- Will anyone be affected by this decision?
- Is the owner or board likely to make this decision on the basis of their ideas about how people ought to behave?
- Does the owner or board have an obligation to choose one alternative rather than another alternative?

An eleven step ethical decision making model (Exhibit 1, adapted from Griffin & Ricks, 1996) has been developed which can assist owners and boards when making a decision that contains ethical components. The process can be documented using the worksheet in Appendix B to provide owners and boards with a monitoring and evaluation tool.

Ethical Conduct
Owners and boards have a responsibility to conduct themselves in an ethical manner in all of their responsibility areas and to uphold honest, prudent and ethical best practices in exercising their responsibility.

Exhibit 1: Steps in Ethical Decision Making (adapted from Griffin and Ricks, 1996)

Does this decision have ethical components?

1. Identify the issue or practice that is causing the problem.
2. Indicate which individuals or groups are to be considered in the solution for your dilemma.
3. Explain what considerations each person/group is owed and why, particularly in terms of rights and responsibilities.
4. Indicate the values that relate to the issue/practice and persons/group.
5. Develop alternative courses of action.
6. Choose reasonable alternatives.
7. Evaluate the consequences of taking each reasonable alternative- short term/long term effects, psychological, social, and economical.
8. Apply values and principles conscientiously.
9. Choose a course of action.
10. Having decided on a course of action, act with a commitment to that action. Assume responsibility for the course of action.
11. After a period of time, evaluate the action and assume responsibility for the consequences of the action.

In maximizing child care services, owners and boards have a responsibility to ensure that the conduct of all those involved in the delivery of their quality child care service is ethical. An ethical conduct policy is *articulated* to outline the responsibilities of owners or boards for ethical conduct, how their ethical conduct will have an impact on their delivery of a quality child care service and what they will do to carry out this responsibility. The policy includes a process that will be used in solving problems with ethical components. To develop the policy, they identify potential ethical dilemmas that may arise in meeting the responsibilities in all the areas and the ethical conduct expectations for themselves, their administrator and the staff. Owners and boards identify what they hope to achieve with their ethical conduct policy, conditions that activate the policy, and how they will conduct themselves in exercising the policy.

With their responsibilities, reasons and actions articulated, owners and boards articulate operational parameters for their administrator in her ethical conduct, and through her, the staff. The ethical conduct policy contains the operational parameters for the administrator, the expectations that the owner or board has for her ethical conduct, how the child care service will be represented by her and what she can say and what she can not say. These are clearly articulated and documented in the ethical conduct policy.

The owner or board *communicates* their ethical conduct policy to those to who they are responsible, and to those for whom they are responsible, choosing what aspects of the policy are relevant to communicate. They choose the messages to be communicated, and the kind of methods and media that will be most effective. They ensure that their communication is understood and accessible.

With the ethical conduct policy, including operational parameters articulated and communicated, owners and boards now *monitor* the ethical conduct and of the policy. Measures are in place to ensure that the conduct of the owner or board, the administrator, and the staff is ethical. All measures will relate to how the ethical conduct will relate to the improvement of the quality of the child care service. A process is put in place to track these measures, identifying what information is to be collected and documented, how often, who will monitor, and what decisions will be made regarding the information and by whom. Decisions will be documented.

Owners and boards develop a regular and timely process to *evaluate* the overall effectiveness of their ethical conduct and that of the administrator and staff, the administrator's performance in relation to the operational parameters of the ethical conduct policy, and the ethical conduct policy itself. Information that is gathered in the monitoring process as well as other information is used to evaluate. The evaluation is documented and shared with relevant individuals and groups. Adjustments and revisions are made to the policy so that it will contribute to the improvement of the quality of child care services. Revisions are shared with relevant individuals and groups.

VI. Ethical Conduct

Process	**Responsibility:** Ethical Conduct
The Process: *How the owner or board realizes their responsibility.*	*The Responsibility:* *Owners and boards have a responsibility to conduct themselves in an ethical manner in all of their responsibility areas and to uphold honest, prudent and ethical best practices in exercising their responsibility.*
1) Articulate: a) Develop a policy for the responsibility area i) Describe and document the responsibilities of the owner or board in relation to the responsibility area.	What aspects of your responsibilities may involve decisions with ethical components? What actions will you take to ensure that decisions are evaluated for their ethical components? What conditions will activate your ethical conduct policy? What process will you use when confronted by a decision with ethical components?
ii) Describe and document how the owner or board will be effective in achieving the provision of a quality child care service in relation to the responsibility area.	How does your ethical conduct relate to your provision of a quality child care service? What systems are in place to monitor your ethical conduct? What systems are in place to evaluate your ethical conduct? What will you monitor? What will you evaluate?
iii)Describe and document how the owner or board will carry out their responsibilities in relation to this responsibility area?	Describe your process for assessing the ethical implications in all of your responsibility areas. How will you document that you have exercised your ethical conduct responsibility in a timely and efficient manner? Describe any conduct expectations that you will observe in exercising your ethical conduct responsibility.
b) Develop operational parameters i) Describe and document the responsibilities of the administrator in relation to this responsibility area.	What areas of The Management Areas Grid (Appendix A) may present ethical considerations? What is in place to ensure that the administrator applies ethical decision making in all her management areas?

Process	**Responsibility:** Ethical Conduct
	How will these operational parameters reflect the owner's or board's commitment to quality child care? Describe any conduct expectations for the administrator to observe regarding her ethical conduct.
2) *Communicate:* a) Develop effective media, eg, policy documents, brochures, etc. to communicate the policy for this responsibility area.	What information for your ethical conduct policy will be communicated? What media will be most effective in communicating these aspects? What resources will you dedicate to these communications resources?
b) Communicate the policy for this responsibility area to those to whom the owner or board is responsible.	What parts of the owner or board ethical policy have to be communicated to whom you are responsible? How will you communicate this policy? How will you ensure that those with whom you communicate understand this policy?
c) Communicate the policy for this responsibility area to the administrator and through her, the staff.	What parts of your ethical conduct policy have to be communicated to your administrator? How will you communicate this policy? How will you ensure that those with whom you communicate understand this policy?
3) *Monitor:* a) Develop processes to monitor the owner's or board's performance in carrying out its responsibilitiesin relation to this policy reviewed?	How will you monitor your ethical conduct in all of your responsibility areas? What information will you collect to measure the effectiveness of your ethical conduct? How often will the information be collected? Who will collect the information? How will the information be used?
b) Develop processes to monitor the administrator's performance in carrying out her responsibilities in relation to this policy's operational parameters.	What systems are in place to monitor the ethical conduct of the administrator? What information will you collect? Who will collect the information? How often will you review the information? What measures are in place to respond to the administrator when exceptional circumstances may require ethical decisions?

Process	**Responsibility:** Ethical Conduct
	How can the administrator initiate these measures? How can you initiative these measures?
c) Develop systems to document the owner's or board's performance in relation to this policy.	What monitoring information will be documented? How is the monitoring documented? Who will collect the monitoring information? When will the information be monitored? Who will monitor the information? With who will the monitoring information be shared?
d) Develop systems to document the administrator's performance in relation to the policy's operational parameters.	What monitoring information will be documented? How is the monitoring documented? Who will collect the monitoring information? When will the information be monitored? Who will collect the information? With who will the information be shared?
e) Describe how the monitoring will enable the owner or board to adjust the policy in a timely and effective manner for the continual improvement of the quality of the child care service.	How are decisions made so that the monitoring information can inform the adjustment of the policy to increase its effectiveness? Who makes the decision? When are the decisions and adjustments made? How are decisions documented? Who needs to be informed of adjustments?
4) *Evaluate:* a) Develop a regular and timely process to evaluate the performance of the owner or board in its purpose to provide a quality child care service in relation to this responsibility area.	How will you evaluate your ethical conduct? What monitoring information will you use? Who will collect the information? What other information is needed? When will you evaluate? How will you use the evaluation? With who will the evaluation be shared? How will you use the evaluation information to improve your quality of service?
b) Develop a regular and timely process to evaluate the performance of the administrator in relation to the operational parameters for this responsibility area.	How will you evaluate the administrator's performance in implementing her operational parameters for ethical conduct? When will you evaluate the administrator's performance in relation to the operational parameters of the ethical conduct policy?

Process	**Responsibility:** Ethical Conduct
	What monitoring information will you use? What other information will you use? Who will gather the information? What methods will you use to gather information? Who will conduct the evaluation? Who will be involved in the provision of the information? How will the information be considered? What actions will be taken as a result of the evaluation? How will you use the evaluation to improve your child care service?
c) Document the evaluations.	How will you document the evaluation of the administrator's performance in relation to the operational parameters of the ethical conduct policy? How will you document the evaluation of your (owner or board) performance regarding your advocacy policy? Who will have access to the documents? What actions will be recorded in the evaluation?
d) Develop a regular and timely process to evaluate and revise the policy in this responsibility area as needed.	When will you evaluate and revise your ethical conduct policy? What information will you consider when evaluating your ethical conduct policy? How will you use the information to evaluate your policy? What is the decision making process regarding revision of the ethical conduct policy? Who makes the decision? Who needs to be informed of revisions?

Overview of the aspects of incorporation legislation that have an effect on legal and ethical conduct:

Regardless of the form of incorporation for the licensed operator, the incorporated body is always held responsible for its actions either in the form of fines etc. from the provincial government or legal action in the form of lawsuits. While the fines from government are generally moderate, legal suits are not limited by the incorporation or Child Care Facilities

Act. The liability of individual members/directors is limited liability in the case of such legal action but cost to the licensed operator is not limited by the Act, because the courts determine it. In the case of sole proprietorship, the individual has unlimited liability.

Child Care Facilities acts have minimal fines, however they can close operations (which results in a loss of revenue) until the infraction is dealt with satisfactorily. A fine can be a fine per day of non-compliance which can add up to a substantial amount.

In the context under-funding for child care services, all licensed operators, regardless as to how they are incorporated, are faced with a challenge of how to remain financially viable while complying with the Child Care Act and providing a quality child care service.

Chapter Summary:

The role of owners andboards in maximizing child care services by providing a quality child care service is defined by the six responsibility areas of direction, guardianship, public relations, advocacy, legal conduct and ethical conduct and the process used in exercising these responsibilities, i.e. articulate, communicate, monitor and evaluate. Owners and boards develop policies and operational parameters for each of these responsibility areas to guide the administrator in her role. In this chapter we have discussed and applied the process used in exercising these responsibilities for each of the responsibility areas. A table is provided to assist owners and boards in developing their policies for the responsibility areas and the process to exercise their responsibilities. A short overview of incorporation legislation that has an effect on the responsibility area is included.

Current Context

To get a sense of how owners and boards were exercising their responsibilities, the authors conducted key informant interviews with nine provincial and territorial directors of child care/early child development services (ECDS) (Manitoba, Prince Edward Island, Newfoundland, North West Territories, New Brunswick, Ontario, Saskatchewan, Nova Scotia and Quebec); and three focus groups with owners, boards and administrators in Edmonton, Alberta; Niagara Region, Ontario and St John's, Newfoundland. The provincial and territorial directors of child care/ECDS provided an overview of the challenges and opportunities faced by the owners and boards in their jurisdiction. The owners, boards and administrators provided a number of "where the rubber hits the road" stories of the challenges faced by those who provide child care services. The format of the key informant interviews and focus groups reflected the framework for maximizing child care services (Figure 1).

Key informants and participants of focus groups expressed the desire and intention of owners and boards to provide a quality child care service to children and families. In expressing this desire they also communicated a sense of frustration and guilt for not having the capacity to realize their desired intention.

Focus group participants confirmed findings in the You Bet I Care! Study (Goelman et al, 2000) stating that child care programs are in a state of crisis and are at a turning point in which they cannot provide the quality of care that they want to provide. The challenges articulated by focus group participants reflected their frustration of having to compromise their standards because of a lack of resources available to them in terms of parent's fees and government funding. With increased fixed operational costs, inability to pay staff equitable compensation, and little range for increasing parent's fees, owners and boards are coming to a decision point of providing a quality child care service or merely custodial care. It was stated that if the current trends continue, the services that will remain are those services that are willing to continue to compromise quality and provide custodial care at best. These realities presented by owner and boards of child care services demonstrate discourse with what society has articulated in the National Children's Agenda through the Early Childhood Development Communiqué and the resources and funding made available to child care services. The Early Childhood Development Communiqué is in its beginning stages with provinces and territories developing priorities for investing in children 0-6. Owners and boards are looking to their provincial and territorial governments to make child care the cornerstone of their initiatives to enrich the early childhood development services system in their province or territory and to provide funding and resource support to the child care delivery system.

A key informant summed up the challenge by stating:

> *"We can't expect care & education when we are only paying for custodial care. We in child care are continually told that we have to provide high quality care but how can we when nobody is willing to pay for it?"*

The intention and desire of owners and boards to provide a quality child care service was consistently expressed by key informants and participants of focus groups sessions. Owners and boards recognized that their role was in direction, guardianship, public relations legal conduct, and ethical conduct, but the ways in which they carry out these responsibilities and their effectiveness in providing a quality child care service in relation to these responsibilities was dramatically diverse. (Focus group participants were not sure that it was the responsibility of owners and boards to participate in advocacy activities.)

Key informants commonly identified that definition was required in regards to the responsibilities of owners, boards and administrators and the ways in which they carry out these responsibilities. This lack of clarity was said to perpetuate role confusion creating actions that work at cross purposes and undermine the effectiveness of owners, boards and administrators in achieving the provision of a quality child care service. In some cases key informants suggested that owners and boards are over-involved in operations and inadvertently impede best practice with their suggested lack of understanding of what is required to manage the daily operations of a quality child care service. A key informant shared the following comment:

> *"...when owners and boards get involved in operational issues such as staffing their actions can undermine the administrator and her ability to be effective".*

Other comments suggested that the ambiguity caused by undefined roles perpetuated communication challenges, complacency, over use of power and abdication of responsibility by boards, owners and administrators. A key informant commented,

> *"Operators appoint a director but doesn't share authority, the director(administrator) doesn't share information with the licenser and is reluctant to deal with the licenser or to seek advice because she is intimidated because of their perceived lack of authority."*

A further reality expressed by provincial and territorial directors, owners and boards is the consistent and continuous change in advisory committee membership and/or board members and staffs of the child care service. In many provinces and territories the Child Care Facilities Legislation regulates parental involvement by prescribing the presence of a parent advisory committee and/or parents being part of the membership on the child care services board of directors. Parent's involvement is generally limited to the time that their child attends the child care program. This creates challenges for child care services including recruitment and orientation of parents who can be involved in the child care service at an advisory level.

Focus group participants and key informants commonly identified the need for on-going support, training and resources to be available to owners, boards and administrators to support them in being effective in carrying out their responsibilities. Suggestion included: a telephone support line for owners, boards and supervisors, and tools to help define the roles of owners and boards.

To maximize a child care service, it was recommended that owners and boards need knowledge of the acts governing licensing child care facilities, employment law, business practices and child development. It was suggested monitoring systems must be in place to adjust the direction of the service and provide for long term stability. An interest in accreditation as a means of monitoring and evaluating child care services was expressed.

Owners, boards an administrators expressed a frustration that child care services were often compared to big business, with those standards applied to their service. As was stated in the introduction, one individual may very well fulfill all three roles in the delivery of a child care service, those of owner, administrator and teaching staff. Often administrators of non profit societies licensed to provide a child care service are also a board member. The reality is that generally most child care services are small business with many being sole proprietorships. Sole proprietorship is the simplest and most widely used form of business enterprise. They are not covered by business incorporation Acts. A sole proprietorship is someone setting up shop without any legal protection. That means that if they are sued or they owe debts the entity that is suing them or the person owed the debt has a claim on the individuals assets e.g. house, car, investments in other businesses, that is there is unlimited liability on the part of the sole proprietor. They are not big businesses, they have little or no protection.

Currently child care is at a point of tremendous opportunity and at the same time tremendous fragility. With the Early Childhood Development Communiqué, First Ministers, on behalf of Society have said that children 0 - 6 are a priority. Child care practitioners are being respected for their expertise in early child development and expectations for what they will do are increasing. Provincial and Territorial Directors of Child Care/Early Childhood Development Services and owners, boards and administrators of child care services confirmed this fragility due to a lack of resources limiting what they can do. With this acknowledgement, key informants and participants in focus groups prioritized the need for increased resources; support and training to facilitate the effectiveness of owners and boards in providing a quality child care service.

In articulating policies on direction, guardianship, public relations, advocacy, legal and ethical conduct for themselves, and developing operational parameters to guide their administrator in implementing these policies, owners and boards provide an infrastructure that can maximize their child care service. The clarity of responsibilities will enable owners and boards and their administrator to provide a quality child care service.

With the publication of *Maximizing Child Care Services: The Role of Owners and Boards, a discussion paper,* the authors of this paper sincerely hope that it will give definition to the role of owner and boards in their provision of a quality child care service. The paper is supp! mented by the *Child Care Resource Link: Owners & Boards*, **www.eccdc.org/ccresourcelink** , providing owners and boards with access to resources, tools and training that are currently available in relation to their role.

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APPENDIX A:
Early Childhood Administrator Management Areas Grid

PRACTICE	A. Systems	B. Policy	C. Services & Programs	D. Legal/ Professional Sanctions	E. Planning	F. Finances
RELATIONSHIPS I. Staff	1. Medicals 2. Compensation-salary scales, payroll 3. Recruitment 4. Hiring 5. Termination 6. Scheduling 7. Evaluation 8. Record, store &secure personnel information 9. Record & store anecdotal behavioural and medical information regarding children 10. Orientation 11. Professional development 12. Rewards & recognition 13. Communication 14. Evaluate & document program effectiveness 15. Ensure adequate supply of qualified substitues 16. Decision making with clear lines of responsibility	1. Personnel 2. Program-outing, discipline, philosophy, curriculum etc. 3. Procedural guidelines re health, safety, emergency, including medications, serious incident, accident 4. Confidential information policy 5. Job descriptions 6. Anti Bias 7. Parent-staff 8. Evaluation 9. Accepting and releasing children 10. Benefits 11. Criminal/child abuse registry checks	1. Resources 2. Team building-professional development, coaching 3. Supervision-mentoring, evaluation, discipline, mediation 4. Advocacy 5. Curriculum development a) programs respect diversity in family dynamics, culture, abilities, etc.; b) Reflect centre philosophy c) Ensure materials and resources are age appropriate d) Ensure adherence to safety procedures e) Ensure nutritional needs are met 6. Ensure adequate resources are available to implement quality programming (stimulation, protection & building relationships) 7. Consults with health professionals regarding health and developmental issues and initiate interventions as required by external agencies [6] 8. Timely and regular staff meetings 9. Represent licensed operator to staff and liaise 10. Trains staff in child abuse protocol, control of infectious diseases and workplace health and safety procedures	1. Labour Act 2. Child Welfare Act 3. Day Care Act 4. Insurance-malpractice liability 5. Documentation 6. Child Care Practitioners Code of Ethics 7. Criminal Reference Check legislation [5] 8. Health Act	1. Input to strategic planning from staff re program, facility, policy,etc. 2. Assess available resources and identified needs for new and existing programs 3. Curriculum planning consistent with program philisophy 4. Operations/Management plan 5. Staffing plan	1. Payroll 2. Purchasing program materials,resources and supplies 3. Enrollment/attendance 4. Petty cash

5. Where required by Law
6. Grant MacEwan Community College. Early Childhood Administrator Occupational Analysis and Validation Survey results, 1992. GMCC Edmonton, 1992

APPENDIX A:
Early Childhood Administrator Management Areas Grid

PRACTICE	A. Systems	B. Policy	C. Services & Programs	D. Legal/ Professional Sanctions	E. Planning	F. Finances
RELATIONSHIPS II. Families	1. Recording and informing parents of information regarding children - anecdotal, developmental 2. Documentation - medical, behavioural, key events/ happenings, unusual incidents, information regarding children 3. Wait list maintenance and cultivation 4. Enrollment orientation and discharge	1. Program policy 2. Payment policy 3. Parent/client policy - a) Medical b) Suspected child abuse(parent/other/staff) c) Arrival/Departure (acceptance/releasing) d) ill child e) Accident/serious incident f) Enrollment g)Orientation h) Discharge i) Nutrition 4. Wait List policy 5. Confidential Information Policy 6. Parents role in the centre	1. Regular and timely communication re children & centre events, activities and plans 2. Liaison with community services and families where appropriate 3. Parenting resources 4. Programs respect diversity in family dynamics,culture,etc. 5. Engage parents in program 6. Interprets centre philosophy to parents	1. Day Care Act 2. Child Welfare Act 3. Documentation 4. Child Care Practitioners Code of Ethics 5. Freedom of Information Act	1. Input to strategic planning by families 2. Client satisfaction evaluation 3. Wait list	1. Invoicing 2. Collections 3. Fee structure 4. Receipts
III. Licensed Operator Owners/ Boards of Directors	1. Regular & timely status reports on all aspects of centre management to the Licensed Operator 2. Access licensed operator as a resource and support 3. Evaluated annually by Licensed Operator 4. Archives and maintains historical perspective of centre and its programs 5. Systems to manage information and document quality of centre services 6. Handle Correspondence	1. Operations Policy Manual 2. Job decsription	1. Quarterly reprots and documentation 2. Timely & regular management meetings 3. Serve as a resource & support to centre committees and licensed operator 4. Advocacy 5. Implement policies and procedures established by Licensed Operator (Owners/Boards)	1. Registry of Joint Stocks (Incorporation) 2. Child Care Practitioners Code of Ethics 3. Day Care Services Act	1. Identify and represent areas for centre develop-ment to Licensed Operator 2. Develop operations plan to implement Licensed Operator's strategic plan	1. Budget-develop, monitor, evaluation & adjust 2. Accounts Payable 3. Accounts Receivable 4. Cash flow - deposits, payables, petty cash 5. Audit 6. Reporting financial status to licensed operator

APPENDIX A:
Early Childhood Administrator Management Areas Grid

PRACTICE	A. Systems	B. Policy	C. Services & Programs	D. Legal/ Professional Sanctions	E. Planning	F. Finances
RELATIONSHIPS **IV. *Facility***	1. Inventory control 2. Requisition, repair, replacement of materials and equipment 3. Contracting 4. Leases 5. Security 6. Optimal space usage	1. Program policy re fire, health, safety & program procedures 2. Facility review 3. Contracting 4. Leases	1. Maintenance 2. Design 3. Layout 4. Outdoor space 5. Office space 6. Consultation space for private meetings 7. Kitchen Facilities 8. Classrooms 9. Distribution of materials, equipment & supplies 10. Washrooms 11. Meeting with authorities regarding the facility as required 12. Ensure that the environment is healthy & safe for all who are involved in the centre	1. Fire, Health, Day Care Acts 2. Zoning Laws 3. Taxes 4. Commercial Assessments 5. Insurance/Risk Mangement 6. Documentation	1. Input to strategic planning regarding facility 2. Resource development planning 3. Upkeep/replacement/ additions plan 4. Review and project future needs for facility	1. Purchasing services, equipment for facilities 2. Tendering 3. Job costing
V. *Community*	1. Regular audits of systems, programs, accounts 2. Communications plan for projecting an effective public image 3. Marketing 4. Gather relevent social/ political information that will affect the centre 5. Assessment of community needs 6. Licensing	1. Communications policy 2. Sponsorship policy 3. Volunteer policy 4. Student placement policy 5. Grant policy 6. Community involvement 7. Licensing	1. Marketing & analysis strategy that reflects honest best practicies in carrying out the centre's philosophy 2. Public education & awareness of child growth & development& benefits of child care services 3. Promotion of quality child care 4. Referral 5. Volunteer 6. Advocacy 7. Develop materials to promote the centre 8. Establish partnerships with community services/ organizations 9. Liaison with Community Services/Organizations regarding the child care service	1. Child Welfare Act 2. Day Care Act 3. Code of Ethics 4. Freedom of Information Act 5. Criminal Reference Check legislation where required	1. Community input to strategic planning 2. Resource/service development in response to community needs 3. Fundraising	1. Fundraising 2. Funding/investment partners 3. In kind donations 4. Deal with financial institutions and funding bodies

Appendix B:

Steps In Ethical Decision Making: Using the worksheet

Does this decision have ethical components?

Questions:

- Is anyone's welfare at stake?
- Will anyone be affected by this decision?
- Is the owner or board likely to make this decision on the basis of his or her ideas about how people ought to behave?
- Does the owner or board have an obligation to choose one alternative rather than another alternative?

1. What is the issue or practice that is causing the problem? Write these down on the ethics work sheet.
2. Indicate which individuals or groups are to be considered in the solution for your dilemma (use the information you gather in referring to legalities, personalities, legislation etc.) Put in the **individual/group** column on the ethics work sheet.
3. Explain what considerations each person/group is owed and why, particularly in terms of rights and responsibilities. Put in the **considerations** column.
4. Indicate the values that relate to the issue/practice and persons/group. Put in the **values** column.
5. Develop alternative courses of action. Put in **Alternative actions** column on the work sheet.
6. Choose reasonable alternatives. Check if reasonable in the **Reasonable or no** column.
7. Evaluate the consequences of taking each reasonable alternative- short term/long term effects, psychological, social, & economical. Put in the **evaluation column** on the worksheet.
8. Apply values and principles conscientiously.
9. Choose a course of action. Write the action you will be taking on the work sheet.
10. Having decided on a course of action, act with a commitment to that action. Assume responsibility for the course of action.
11. After a period of time, evaluate the action and assume responsibility for the consequences of the action

Ethical Decision Making Work Sheet:

1.The issue or practice that is causing the problem is:

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2. Individuals/Groups	3. Considerations	4. Values

5. Alternative Courses of Action	6. Reasonable or Not?	7. Evaluation of Consequences

9. The action we will take is:.....

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Appendix C: Overview of Legislation related to child care services

Maximizing Child Care Services: The Role of Owners and Boards

By John Jacobs, MA

Introduction:

This appendix examines incorporation legislation affecting the ownership of child care facilities in the thirteen provincial and territorial jurisdictions. It reviews the Act related to three common forms of incorporation: co-ops, business and societies. Where there is a reference to incorporation in the Child Care Facilities Act and Regulations it is also included.

The appendix reviews the obligations and responsibilities in each Act that have a bearing on direction and guardianship, in particular:

- incorporation
- financial structure
- organizational structure, specifically the rights and responsibilities of Directors/ members/shareholders
- reporting obligations and penalties for non-compliance.

References to the applicable sections of the Acts and Regulations are included.

While incorporation provides numerous benefits, it also entails obligations to the regulating body (the provincial/territorial government) and to the members/shareholders. Ensuring the legal obligations are met is the responsibility of the incorporated licensed operator (LO) through its directors and management.

Child care centre license holders must balance a number of, and sometimes conflicting, objectives. They must, for example, strive to meet the expectations of the parents and maintain, at a minimum, the standards of the Child Care Facilities Licensing Act while meeting financial objectives in order to maintain and develop the centre. The Child Care Facilities Acts generally apply equally to businesses, co-operatives and non-profit societies, in setting operational standards. But how the licensed operator balances its various organizational and financial objectives is influenced by the Act under which it is incorporated.

The incorporation acts set the organizational structure that establish the accountability of the management of the child care service to investors or members, which in turn effects how the licensed operator deals with organizational direction and guardianship. The interests of the members/shareholders and how the corporate decision-making process is structured by the Incorporation Act will effect the development of the license holder as a corporate entity.

How the Act Determines the Organizational Structure of the Licensed Operator

The terms and conditions of incorporation are established by the incorporation documents (called articles/memorandum/letters patent depending on jurisdiction). The documents are submitted to the Minister/Director/Registrar[2] who oversees the Act, as part of the application for incorporation. The documents provide the incorporates with the opportunity to set the

[2] The term varies between provinces. The term Director will be used hereafter.

terms of the development of their organization. They can, for example, limit the business to a particular activity, such as the operation of a licensed child care service; limit the number of shareholders allowed, limit their activities to a particular location etc. Some Acts require that the applicants for incorporation state the specific purpose of the organzation.[3] The incorporation documents must be approved by the Director.

The incorporation documents then form the basis upon which incorporation is granted. Changes to these documents must be approved by a substantial majority of the shareholders/ members (the exact number varies from Act to Act, but by at least two-thirds) and by the Director. By-laws set the decision-making procedures. Changing by-laws is generally less onerous than changing incorporation documents, but this also varies from one Act to another. Some Acts require that by-laws be submitted for approval to the Director, as part of the application for incorporation.

The financial and organizational structure of the incorporated body depends on whether the corporation has share capital. The management of the corporation/co-operative is accountable to the members/shareholders through the election of directors at membership or shareholder meetings. The Acts also establish accountability by requiring corporations to regularly file reports with the Director and to maintain records that are open to inspection by the shareholders or members. Most Acts also allow for member initiatives at general meetings.

Business Corporation

Business Corporations Acts facilitate the incorporation of an individual or a group of individuals whose objective is financial gain. The Acts limit the liability of shareholders/ owners, establish the rights of shareholders to a portion of the profits of the corporation, establish the legal claim of shareholders to the assets of the corporation upon dissolution, and ensure the accountability of the business to its shareholders.

The incorporation documents prepared by the person(s) applying for incorporation determine the purpose of the business and its proposed activities, the share structure and the organizational structure. The shareholders maintain some control of the company through their ability to elect and remove, company directors. Voting at shareholder meetings is on the basis of one common share one vote, i.e., the more shares one has the more votes one is entitled to, and the more influence one has on the businesses direction. The directors are ultimately responsible for compliance with both the Child Care Facilities Act and the Business Corporations Act.

Co-operatives

Co-operative associations pool the resources of their members and, in turn, provide services to their members. The memorandum of association sets the purpose and financial structure of the co-operative association, and the criteria for membership and procedures for decision making are set out in the by-laws. Any changes to the by-laws and the memorandum must be approved by three-quarters of the members of the co-operative. At the core of a co-operative is that accountability is established on a one member one vote basis in the selection of

3. In general the business incorporation Acts are the least restrictive on business activities while the society/non-profit Acts are the most restrictive.

directors and in conducting business at member meetings. All members have an equal say in the affairs of the co-operative regardless of the number of shares they hold.

The financial structure of a co-operative is dependent upon whether it has shares. In co-operatives with shares the members, through their shares in the co-operative, provide the capital which enables the organization to operate and develop. Co-operatives without shares depend on regular membership fees. In most provinces non-members may not purchase shares in the co-operative.[4] If a co-operative with shares generates a surplus, the surplus may be allocated to the members in proportion to each member's use of the services, or patronage, of the co-operative. Co-operatives without shares can not distribute the surplus to its members.

Corporations without Share Capital/Non-Profit Societies

An association of individuals to limit their personal liability in the performance of a public good or service forms incorporated societies or corporations without share capital.[5] Incorporating as a society enables an association to carry on its operations similar to a business or co-operative, but it is unable to sell shares or to distribute assets or property among the members. All revenue raised or surplus retained must be used in the provision of the services to members or the community. The organizational procedures are usually agreed to in the by-laws that are approved and filed with the provincial/territorial government's Director. The objectives of the organization can only be changed by a resolution approved by substantial majority of the members and the Director must approve the changes.

Societies establish the criteria for membership. Non-profits are generally limited to raising funds through donations, grants, borrowing from financial institutions and surplus from operations.

Review Format:

The following reviews of provincial incorporation legislation present the research which inform and support the discussion paper, *Maximizing Child Care Services: The Role of Owners and Boards*. The review is also an initial orientation for reader to the incorporation legislation. The reviews are not summaries of the Acts – the reviews seek to identify the key aspects of the Acts that set the organizational and decision-making structure of the incorporated entity.

The reviews of incorporation legislation are presented by province/territory. The reviews for each province/territory are presented as follows:

- references, if any, in the Child Care Act to incorporation and/or to the regulation of parental/guardian involvement in the affairs of the licensed operator;
- Business Corporations Act: Legal Obligations;
- Co-operative Associations Act: Legal Obligations;
- Societies Acts/Corporations without Shares: Legal Obligations.

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4. Recent changes in some provinces have enabled non-members to invest in co-operatives, thereby providing the co-operatives with potential access to a larger pool of capital.

5. The term used – non-profit society or corporations without share capital – varies between jurisdictions. In some provinces societies are covered in a separate Act and in other provinces non-profits are incorporated by a section of the Business Corporations Act.

Qualification and Disclaimer:

Non-distributing Corporations

The review assumes that child care license holders are smaller "non-distributing" businesses/associations, that is, they do not trade their shares publicly on the stock market.

Disclaimer

This review is not a replacement for a careful review of the relevant Act and the services of professionals in the incorporation process. Readers considering incorporating are strongly advised to seek the services of legal and financial professionals.

Alberta

A) Business Corporations Act: Legal Obligations

Corporate Records

Corporations must at all times have a registered office within Alberta (sec. 19) where the following official records must be kept:

- the articles and the by-laws, all amendments to the articles and by-laws, a copy of any unanimous shareholder agreement and any amendment to a unanimous shareholder agreement;
- minutes of meetings and resolutions of shareholders;
- copies of all notices required by the Act;
- an up to date list of shareholders;
- copies of the financial statements and auditor's reports;
- a register of disclosures required by the Act (specifically sec. 115).

The Registrar must be informed of any change in the address of the office. Every corporation must send the Registrar an annual Return as prescribed by the Regulations (sec. 256).

Directors and shareholders of a corporation are entitled to access the records (sec. 21). Creditors of the corporation may examine the corporation's by-laws and amendments, the list of directors and financial statements. Anyone may have access to the list of directors and shareholders, including the number of shares held (sec. 21.4, 21.5). A corporation must maintain the records, prevent falsification and must facilitate detection and correction of inaccuracies in its records required by the Act (sec. 22(3)).

By-laws and Articles of Incorporation

Unless the articles, by-laws or a unanimous shareholder agreement state otherwise, the directors may, by resolution, make, amend or repeal any by-laws that regulate the business or affairs of the corporation. The directors must submit any such changes to the shareholders at the next shareholders meeting for approval, amendment or rejection (sec. 98). A shareholder entitled to vote may put forth a proposal (subject to sufficient notice to the directors) to make changes to the by-laws and may make nominations for directors (sec. 131). Any fundamental amendments to the corporation, specifically the incorporating articles such as changes to classes of shares, the restrictions on business activities and/or the name of the corporation must be sent to the Registrar (sec. 167).

Corporate Finance

All shares of a corporation must be registered and without a nominal or par value, i.e., without a stated or purchase value (sec. 24(1)). More than one class of shares may be issued as set out by the corporation's by-laws. If a corporation has only one class of shares the rights of the all of the shareholders are equal, including the rights to vote at any shareholders meeting, to receive any dividends declared by the corporation and to receive the remaining property of the corporation on dissolution.

Directors and Shareholders

The directors, of whom there may be one or more, manage the business and affairs of the corporation. The director(s) may also be employees and/or officers of the corporation (sec. 97). Directors do not have to be shareholders, unless otherwise stipulated in the by-laws (sec. 100). At least half of the directors must be residents of Canada. The shareholders may, at a special meeting, remove any director or directors from office (sec. 104).

When a business is in liquidation bankruptcy proceedings the directors are jointly and individually liable to employees for all debts not exceeding six months wages payable to each employee for services performed for the corporation while they are directors (sec. 114).

A director with a material interest in a contract or proposed contract, either directly or indirectly, through another corporate body or another person, must disclose this material interest in writing to the other directors and it must be entered in the corporate records (sec. 115).

While the directors are to act in the best interests of the corporation and comply with the by-laws and any unanimous shareholder agreement, no contract, by-law or resolution relieve the director from the duty to act in accordance with the Act or relieves her/him from liability for failing to comply with the Act (sec. 117).

Annual Shareholder Meetings

The director(s) must call annual shareholder meetings. The meetings must be held no later than eighteen days after incorporation and not more that fifteen months after the last annual shareholders meeting. Special meetings may be called at any time (sec. 127). Shareholders must receive at least twebty-one days notice for annual or special meetings (sec. 129). An unanimous shareholder agreement may regulate and manage any of the business and affairs of the corporation including restriction revoking the powers of the directors (sec. 140).

At the annual meeting the directors must provide shareholders with financial statements prepared by an auditor appointed at the previous annual meeting (sec. 149, 56). The annual statements must include a balance sheet, a statement of retained earnings, an income statement, and a statement of changes in financial position. The statements must be prepared according to generally accepted accounting principles (regulation 9). The statements must compare financial operations for the previous two years, and include the auditor's report, if one is available (sec. 149). The auditor's report must include a statement as to whether or not the statements present fairly the financial position of the corporations (reg. 9). Statements, approved by the directors must be sent to shareholders at least twenty-one days before the meeting. Directors must present the annual shareholders meeting with a document stating the remuneration paid to the directors and the aggregate remuneration paid to the five highest paid employees of the corporation (regulation 10).

Penalties and Dissolution by the Registrar

Contravention of the Business Corporations Act can result in fines of up to $5000 and/or six months imprisonment.

The Registrar may dissolve the corporation, through issuing a certificate or through an application to the Court, if the corporation does not carry on any business for three consecutive years or if the corporation is in default for a year in sending the Registrar any document or notice required by the Business Corporations Act (sec. 205).

Upon application from a shareholder, the court may also order an investigation into the affairs of the corporation and any of its affiliates (sec. 223). The Court may order any action it deems appropriate based on an investigation (sec. 224).

Any "interested person" may apply to the Court for an order dissolving a corporation if the corporation has failed for two or more years to hold shareholders meetings (sec. 206). The Court may order the liquidation and dissolution on the application of a shareholder if the Court is satisfied that the corporation has acted in a manner that is "oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, or director." (sec. 207)

B) Review of the Alberta Co-operative Associations Act: Legal Obligations

In general "an association may be incorporated for the purpose of conducting and carrying on a co-operative undertaking, business or industry" (sec. 11(1)), in Alberta by ten or more people (sec. 3(1). Five or more people that form with an objective that has the prior approval of the Director may form a co-operative (sec. 3 (2)). Co-ops can be with, or without share capital (sec. 3). An application for incorporation is filed with the Alberta Director on the basis of a memorandum of association (sec. 3(3)) and by-laws (sec. 18(1)) as prescribed by the Act and regulations. The by-laws include the standard by-laws as set by the Director and any modification of the standard by-laws and additional by-laws must be submitted as supplemental by-laws (sec. 2 (5)) to be approved by the Director.

The memorandum of association must include the objective of the co-operative. The incorporation documents (memorandum and by-laws), can only be modified after incorporation by an extraordinary resolutions at a general meeting (annual or special) (sec. 18).

Membership and Meetings

Members must be comply with the by-laws and be approved by the directors of the co-operative (sec. 21). The directors may also terminate membership by a resolution passed by a seventy-five percent majority at a board meeting, unless otherwise stated in the by-laws (sec. 40). Membership can only be transferred upon the approval of the directors of the co-operative (sec. 21 (6)). A member is entitled to one vote regardless of the number of shares she/he holds (sec. 4 (a)).

Membership Meetings

The co-operative must hold an annual general membership meeting (AGM) (sec. 30). The directors may call additional general meetings, as they deem appropriate. The directors must call a special general meeting when requested to do so in writing by twenty-five percent of more of the members. The request must state the purpose of the meeting (reg. 4). If the directors fail to call the requested meeting the members may call the meeting.

Directors

Directors of the co-operative shall be elected at a general membership meeting by the members on a one member one vote basis (sec. 26). These elections shall occur as stipulated by the by-laws, usually at the annual general membership meeting. The directors shall not number less than five (reg. 8) and they must meet at least every three months (sec. 27). The directors are responsible for the "general direction and supervision of the affairs and business of the association."

Finances

In a co-operative with shares the memorandum of association stipulates the number of shares required for membership (sec. 3 (b), sec. 19). The number of shares may be changed by an extraordinary resolution (sec. 109, sec. 6(1)). The co-op may issue other shares but these may not carry any voting rights (sec. 19 (2)). No member is able to hold "more then 1one-sixth of the total issued share capital" of the co-operative (sec. 19 (8)). Supplemental by-laws may allow for co-operatives to borrow from its members (sec. 34).

The directors must present financial statements approved by the directors to the members at the annual general meeting (sec. 25).

No member is liable for more than the unpaid amount of the face value of her/his shares, if the shares are paid up the member is absolved from any liability (sec. 23) pertaining to the affairs of the co-operative.

Any surplus from operations at year-end can be set aside for reserves, pay up to a maximum of five percent interest on members shares or "by crediting to members in the form of patronage dividends" a portion of the surplus (reg. 20). Such dividends are allocated to members based on their patronage of the co-operatives services, i.e. the more the members has used the co-operatives services the greater the dividend regardless of how many shares the member has.

Recording, reporting and penalties

The co-operative must keep at its registered office a list of members and shareholders, including names, addresses occupations, the number of shares held by each member and the date the membership commenced and ended (sec. 24). A member (sec. 24) may inspect the share register/list.

Every co-operative must on, or before the prescribed date, send the Alberta Director an annual return, using the form prescribed by the Director. The director will file the return (sec. 24 (8)).

Penalties

Any contravention of the Act is an offence and in cases where a fine is not specifically stipulated, is subject to a fine of not less than $100 and not more than $1000. If the contravention continues the fines can be applied for each week it continues (sec. 52).

C) Alberta Societies Act: Legal Obligations

Incorporation

The Societies Act is designed to incorporate and regulate the groups of five or more people choosing to incorporate for "any benevolent, philanthropic, charitable, provident, scientific,

artistic, literary, social, educational, agricultural, sporting or other useful propose, but not for the purpose of carrying on a trade or business" (sec. 3). The Act enables groups of people to come together to provide services for a community and/or for the society's members while limiting the personal liability of the directors (sec. 17). Societies can hire staff, buy property and borrow money (sec. 14) only if these activities are compatible with its "legitimate objectives...and in accordance with its by-laws" (sec. 13). Societies are not able to issue shares, distribute dividends or distribute property among members (sec. 4). The focus of activities is limited by the Act, i.e., for social benefits etc. and they are further limited by the stated purpose of the Society which must be approved by the Registrar as part of the incorporation process (sec. 6). The purpose of the society can only be changed by a special resolution that must still comply with the Act and the Registrar (sec. 11) must approve the change.

The society must have a registered office where stipulated documents are kept for viewing by the membership and the Registrar (sec. 20). The society is kept accountable to the membership through annual general membership meetings at which the directors can be elected and the membership are provided with financial reports including audited financial statements in a form stipulated by the Act (sec. 5, 21). All special resolutions, some of which may change the by-laws and the purpose of the Society, must be passed by seventy-five percent of the membership entitled to vote, either in person or by proxy (sec. 1). A society that contravenes the Act is liable for a maximum fine of $100 (sec. 32). The Registrar, based on sufficient cause, may cancel the incorporation of a society. Any person, or persons, carrying on the activities of the society after cancellation of incorporation is liable to maximum fine of $500 (sec. 28).

Dissolution

Part 17 of the Business Corporations Act (BCA) applies to the dissolution or "winding up" of a society incorporated under the Societies Act (sec. 30). The Registrar may dissolve the society, through issuing a certificate or through an application to the Court if the society does not carry on any business for three consecutive years, or if the corporation is in default by two years in sending the Registrar any document or notice required by the Societies Act (BCA sec. 205).

Any "interested person" may apply to the Court for an order dissolving a society if the society has failed for two or more years to hold membership meetings (BCA sec. 206). The Court may order the liquidation and dissolution on the application of a member if the Court is satisfied that the society has acted in a manner that is "oppressive or unfairly prejudicial to or that unfairly disregards the interests" of any member, creditor, or director" (BCA sec. 207).

British Columbia

A) The British Columbia Company Act (Business Corporations)

Incorporation under the Company Act (hereinafter the Act) enables an organization (hereafter a company) a series of benefits such as: perpetual existence; the power and capacity of a natural person; the ability to raise capital through issuing shares, while limiting the liability of the investors to the amount they have invested in the company. Each share entitles its holder (a member) to one vote at members meeting, thus the more shares held by a member the greater number of votes the member is entitled to. Directors are elected by the members and act on their behalf in carrying out the management of the company. Incorporation gives rise to a series of legal obligations to which the following section gives a general overview. Reporting companies (i.e. those who trade shares publicly) are subject to additional regulation.

Incorporation process

To create a company under the Act, one or more persons must subscribe to the following documents (in accordance with (ss. 5(1), 8):

- a memorandum(s. 5, form 1 in the second schedule)
- articles (s. 6),
- a notice of offices @ (form 3 in the second schedule, s. 8), and
- the proscribed fee to be registered as a company.

The two most important components of incorporation are the memorandum and articles.

1. Memorandum

The memorandum (s.5) is commonly submitted as form 1 in the second schedule of the Act.

a) Mandatory provisions:

i Name (#1 in form 1)

- must include limited, limitee, incorporated or incorporee, corporation as part of its name (s. 16).
- must not be similar to an existing company and subject to approval of the Registrar (ss.17, 18).

ii Shares (#4, 5 in form 1)

- must provide for the aggregate number of shares and classes of shares to be issued (s. 19).

b) Optional provisions:

i Restricted business (see #2 in form 1, and ss.22, 25, 26)

- may be included as an assurance to members that the company will only carry out a particular form of business (e.g. one may put as the purpose of the business to be child care which ensures that the company will always be restricted to the purpose of providing child care).

ii Restricted powers (see #3 in form 1 and ss. 22, 25, 26)

- may list powers the company cannot exercise.

2. Articles

Articles prescribe the rules of conduct of the company (s. 6). Table A in the first schedule provides a template of provisions which can be adopted by a company in whole or in part as its articles of incorporation. Articles must not contravene mandatory provisions of the Act (for example, a company's articles cannot require less than three directors for a reporting company because this would contravene s. 108 of the Act).

Legal obligations of incorporation

1. Records

A company commits an offence if it fails to maintain the records in accordance with the Act.

a) General:

- must maintain a registered office and a record office (which can be the same office) within BC (s 39) where it shall keep records as prescribed in s. 163 (e.g. certificate of incorporation, minutes of every meeting of the directors, etc.) and be capable of furnishing information as outlined in s. 167 (e.g. list of members).
- changes in location of the office must be done according to s. 40.
- the records must be kept in the manner that can be easily reproduced as prescribed in 170.
- the record must be available to directors for examination during normal business hours (s. 164(1)), and for at least two consecutive hours each business day for members and debenture who have authority to access records as prescribed in 164.

b) Accounting:

- must keep accounting records all financial and other transactions of the company as prescribed by 171 that are available to directors during normal business hours and to members to an extent determined by the directors, articles, or resolution.

c) Financial statements:

- financial statements must be approved by the directors
- must be placed before members at general meetings and sent out upon the demand of members and debenture holders (ss. 145, 172, 175-177).

d) Shares

- must keep a register of allotments, transfer of shares and a list of members as outlined in ss. 65 - 74.

e) Debts

- must keep a register of indebtedness in excess of $5,000 to a director or an officer, an associate of one of them (as defined in s. 1) as outlined in s. 75
- must keep a register of debentures as outlined in ss. 76-79.

f) Directors

- must keep a register of its directors as outlined in s. 116.

2. Auditors

Companies must have an auditor that is first appointed by the directors and afterwards appointed by members at the annual general meeting (s. 178). However, a non-reporting company can be exempt from requiring an auditor if all the members consent in writing to a resolution waiving the appointment of an auditor(s. 179). An auditor must meet the qualifications and act with regard to the rights and duties outlined in Part 6 of the Act.

Corporate Finance

Company shares can be par value (with a stated purchase value), without par value (without a stated purchase value), or both, and may be of different classes with special rights and restrictions so long as it is consistent with the memorandum (Ss. 19, 20). Members may transfer shares within accordance to the process outline in the articles (part 3 and part 4 of Table A) and ss. 58-63. If a company has only one class of shares, the rights of all members are equal, including rights to vote at members meetings, receive dividends declared by the company and to receive the remaining property of the company upon dissolution or winding up.

Directors, officers and members

All companies must have at least one director with at least one being a resident of BC and a majority being Canadian (ss. 108 - 109).

Directors are responsible for the management and supervision of the affairs and business of the company. Directors as outlined in the articles (part 15 of Table A) may declare dividends. Directors may also authorize the company to borrow money as they think fit including the issue of bonds, debentures, or any mortgage or charge (Part 6 Table A, Ss 75-99). Some actions by directors, such as sale, lease, disposal of a substantial undertaking, require member approval (s.126).

Each holder of a share is a member of the company. The liability of a member is limited to that paid for the share by the member (s. 55). (e.g. the member is not personally liable for debts, obligations or acts of the company).

General meetings

General meetings must be held annually (s. 139). Directors are responsible for calling a general meeting; however a member may seek a court order for a meeting if the directors fail to call the meeting (s. 143, part 7 in Table A), or members representing at least one-twentieth of the issued shares may make a requisition for a general meeting which the directors must adhere to within four months (s. 147). The required notice, unless waived by the members, is at least twenty-one days (s. 143). The quorum, unless otherwise stated in the Articles is two persons or one person if a company only has one member (s 144).

The directors are responsible for providing financial statements for the period between general meetings (ss. 145, 172). Also occurring at the general meeting is the election of directors, appointment of the auditor, and any business brought under consideration by the report of the directors issued with notice convening the meeting (part 8.1 Table A)

Subject to any rights or restrictions attached to the share, each member is entitled to caste one vote for each share held by the member at meetings in person or by proxy (part 9 Table A, ss. 151-157, 161).

Proceedings and offences

Members may apply for a court order on grounds that the company or the directors have acted in an oppressive manner or unfairly prejudice to one or more of its members (s. 200).

Members representing not less than one-fifth of the shares, the company, or the Minister may request for the court to appoint an inspector to investigate the affairs and management of the company and any of its affiliates (ss 209-215).

A member, (which for this purpose includes a share holder or any other person who, at the discretion of the court, is a proper person to make an application (201(8)), or director, may, with leave of the court, bring an action on behalf of the company for the enforcement of a right/duty/obligation of the company or damages for such a breach (s. 201).

If a corporation commits an offence against the Act, every director or officer of it who authorized, permitted or acquiesced in the offence commits an offence and is liable on conviction to a fine of not more than $2,000 (s. 343).

Alterations, winding down and dissolution

The memorandum and articles can be altered by special resolution (requires a majority vote of three-quarters) (ss. 216-223). The Registrar may dissolve a company for the listed reasons in s.257 which include the failure to hold annual general meetings as required in s.139. A Company may dissolve itself by ordinary resolution (s. 258).

B) British Columbia Co-operative Associations Act: Legal Obligations

The Co-operative Association Act enables associations of three or more people (or three or more eligible organizations) organized and operated on a co-operative basis to become incorporated and carry on business activities (sec. 10). Member liability is limited to the amount unpaid, if any, on a member share (sec. 55). As an association that operates on a co-operative basis, it must adhere to specific principles and methods, in particular the following:

- membership is open to members "who can use the services of the organization and are willing and able to accept the responsibilities of membership;"
- each member is has one vote;
- members contribute to the capital of the association;
- members receive limited or no return on" shares purchased as condition of membership;
- surplus funds from the operations are used for any of the following:
  - reinvested in the association,
  - distributed among members as patronage return
  - community welfare
  - establishing reserves
- education on co-operative enterprise (sec.8).

Incorporation

The Memorandum of Association (Schedule C, Form 1) forms the core of the application to the Registrar for incorporation. The Memorandum must include the following information:

- name of the co-operative
- purpose of the Association
- restriction on business
- restrictions on powers
- share capital structure (how many shares allowed and whether shares are with or without par value (stated face value)
- names, addresses and number of shares of at least three individuals applying for the incorporation

The Memorandum submitted to the Registrar must also be accompanied by the association's rules of association. The rules must address the following areas:

- membership in the association (e.g. the terms of admission)
- share structure
- directors and officers of the association
- financial management
- general meetings (reg. 10)

The Regulations provide a sample "Form of Rules" for which can be adopted or modified to the specific co-operative (Schedule B).

The memorandum and rules may be amended by a special resolution of the membership (sec. 68).

Membership, Voting and Meetings

Eligibility criteria for becoming a member of a co-operative must be consistent with human rights and must be related to the "business restrictions as set out in the memorandum or the Rules and the coop's ability to "compete commercially in offering services to members and prospective members" (sec. 8 (4)). Members must purchase membership shares (sec. 30). Membership may be terminated as per the rules of the co-op (sec. 34(2)) along with a resolution passed by three-quarters of all of the directors at meeting called to consider the membership termination (sec. 34).

Voting

Members of co-operatives are entitled to vote on a one member one vote basis "on all matters to be decided by the members" (sec. 40) and votes are not tied to share ownership. This includes the selection of directors and the approval of special resolutions. The Act allows that the government, a first nation, and/or a corporation may become a member and appoint an individual as representative (sec.32).

Special Resolutions

The directors of a co-operative require a special resolution to change the memorandum or the rules of the co-operative (sec. 68(2)). Such resolutions must be passed at either an annual general meeting or a special meeting.

Meetings

Annual General Meetings or Annual membership meeting must be held (sec. 142). At least fourteen days notice must be provided to the membership for these meetings (sec. 143). The annual general meetings must consider business as described in regulation 55. This includes providing the members with financial statements, reports from the directors and election of directors.

Special general meetings may be called at the initiative of the directors. The directors must call a special meeting if they receive a written request signed by at least twenty percent of the co-op's members (sec. 150).

Finance

Until recent changes in the Act co-operatives were limited to raising capital through member share purchases (upon which no or limited interest was provided). Recent changes in the Act have allowed for investment shares that can provide for dividends (sec. 66 (d)) and the shares may be issued to non-members of the co-op (sec.49). Special rights and restrictions are attached to these shares as stipulated in the co-op's rules, with respect to voting rights and selection of directors (sec. 49, 59).

Surplus from the co-op's operations may be returned to members "in proportion to the business done by the members with or through the association" (sec.9).

Directors

"The directors must manage or supervise the management of the business of the association and may exercise all the powers of the association" (sec. 76). A co-operative must have at least three directors, all of whom must be members of the co-operative unless otherwise stipulated in the rules. None of the directors may be "an undischarged bankrupt" (sec. 79 (4)). Non members may not exceed one-fifth of the co-op's directors (sec. 72). The directors may be paid, and have their expenses covered, as agreed by the members at a general meeting (sec.75). Directors must be elected or appointed by the members as stipulated by the rules (sec.74). Directors can be removed, as stipulated by the rules, by a special resolution approved by two-thirds of the membership (sec. 82).

Audit

A co-op must appoint an auditor annually unless the appointment of an auditor is waived by members' special resolution for a financial year. Each financial year requires a separate special resolution (sec.109). If there is an audit it must be presented to the membership at the annual meeting (sec. 153).

Dissent

Members or investment share holders may dissent in writing to a resolution relating to a change in the co-operative's memorandum or rules and request the redemption of the member's or investor's shares in the co-operative (sec. 160-169).

Records and Penalties

A co-operative must keep a record in its registered office as stipulated by the Act (sec. 128). An annual report must be filed with the Registrar as prescribed in Form 4, Schedule C of the Regulations.

Individuals that contravene the Act are subject to fines from $2,000 to $5,000 and up to $10,000 for subsequent conviction. The co-operative is subject to fines from $5,000 to $10,000, and up to $25,000 for subsequent convictions (sec. 201).

C.) Review of the British Columbia Society Act: Legal Obligations

Groups of five of more persons may incorporate as a society for any lawful purpose such as national, patriotic, religious, philanthropic, charitable, provident, scientific, fraternal, benevolent, artistic, educational, social, professional, agricultural, sporting or other useful purposes, but not for a purpose of carrying on a business, trade, industry or profession for profit or gain unless incidental to the carrying on of a legitimate purpose" (ss 2, 3). Under the Act a society can provide services for a community and/or for the society's members while benefiting from the effects of incorporation such as: having perpetual existence (s4(1)(b)); limiting the personal liability of the members of the society (s. 5); the powers and capacity of a natural person (s.4(1)(d)) which includes the power to buy/sell/exchange/develop/mortgage property, borrow money, issue negotiable instruments, receive and make gifts, enter contracts and leases, employ persons and belong to other societies and organizations (4(2)).

The activities of societies are limited by the Act and by the society's own constitution and by-laws. The constitution sets out the name and purpose of the society. The by-laws set out

the procedure of the society (a template is given in Schedule B which can be adopted in whole or in part) and must include provisions for the admission and removal of members, procedure for calling general meetings, the rights of voting at general meetings, the appointment and removal of directors and officers and their duties, powers and remuneration (if any), the exercising of borrowing powers, the preparation and custody of minutes of meetings of the society (s. 6). The constitution and by-laws of a society can be amended by special resolution (i.e. with not less than seventy-five percent majority vote by members) (ss. 20-23). Extra-provincial societies, reporting societies, and societies representing an occupation are subject to further registrations and obligations.

Incorporation under the Act gives rise to a series of legal obligations. The society must keep records as required by the Act (ss. 11, 36, 37, 38, 39, 64, 68, 69, 70). The society may have an auditor in accordance with ss. 41-55.

Directors are elected by members to manage or oversee the affairs of the society and are subject to specific liabilities in the Act as well as a general duty to act with honesty, in good faith and in the best in interest of the society (see ss 24, 25, 27, 28, 29, 30, and part 5, 6, 7 of Schedule B). Unlike the Company Act, under the Society Act, a society is not able to issue shares and generally the interest of a member is non-transferable (ss. 8, 9). Members may be accepted as prescribed by the by-laws (in part 2 of Schedule B new applicants may apply to the directors to become members).

The society must have annual general meetings (s. 56). A general meeting can be called by the directors, the court and upon the requisition of ten percent of the voting members (ss. 58-59). At the meeting directors must place before the society information required by the by-laws which at a minimum must include a financial statement as set out in s. 64, a report of the auditors, if any, and a report of the directors to the members (s. 64, and also see parts 3 and 4 of Schedule B for procedures).

Societies are regulated by the Register of Companies. Following general meetings the financial statements placed before the meeting must be filed with the Registrar as well as a financial statement in Form 11 of Schedule A (s. 68). The Registrar has powers of investigation suspected of a non-compliance with the Act (s. 84).

Manitoba

A) The Manitoba Community Child Day Care Standards Act and Child Day Care Regulations: References to Form of Incorporation and Parental Involvement

Every child care centre must "provide for parental involvement in the operation or management of the day care centre" (sec. 3(3)).

The Minister is able to provide grants to co-operatives and non-profit corporations (sec. 31.(1)). Co-operatives and non-profit corporations which have the provision of child care as their primary objective are eligible for grants. At least twenty percent of the directors of the organizations must be parents of children attending the child care centre and no more than twenty percent of the directors may be employees of the centre (sec. 36).

According to the regulations, section of 36(2), the "minister shall not authorize a grant to be paid ... to a corporation or co-operative which operates a licensed day care centre unless:

(a) the articles of incorporation, charter or by-laws of the corporation or co-operative provide for representation on the board of directors, from parents of children receiving day care in the day care centre, the staff of the day care centre and the community at large; and

(b) where there is no such provision, the articles of incorporation, charter or by-laws provide for an advisory board composed, to the extent required in the regulations, of representatives from parents of children receiving day care in the day care centre, the staff of the day care centre and the community at large, to advise and assist the board of directors in the operation of the day care centre" (sec. 31(2)).

B) Review of Manitoba Business Corporation Act: Legal Obligations

Incorporation under the Business Corporation Act enables a business a series of benefits such as: perpetual existence; the power and capacity of a natural person; the ability to raise capital through issuing shares while limiting the liability of the investors to the amount they have invested in the company. Each common share entitles its holder to one vote at members meeting, thus the more shares held by a member the greater the number of votes the member is entitled to. Directors are elected by the members and act on their behalf in carrying out the management of the company. Incorporation gives rise to a series of legal obligations to which the following section gives a general overview. Reporting companies (i.e. those who trade shares publicly) are subject to additional regulation.

Articles of Incorporation and By-laws

The Articles of Incorporation establish the terms and conditions of incorporation. The articles form the core of the application for incorporation, submitted to the province's Director. Any fundamental changes to the incorporating articles such as creating new class of shares, changing the shares of any class, changing the number of shares of same class, dividing class of shares, altering restrictions on business activities, and changing the name of the corporation (Sec. 167) must be affected by special resolution or may be authorized by directors without approval of shareholders if so authorized by special resolution (Sec. 167.8)

Unless the articles or by-laws or unanimous shareholder agreement state otherwise, the directors may, by resolution make, amend or repeal any by-laws that regulate the business or affairs of the corporation (Sec. 98). The directors must submit any amendments to the

shareholders at the next shareholder meeting who may, by ordinary resolution confirm, reject, amend, or repeal the by-law (Sec. 98.2).

A shareholder entitled to vote at an annual meeting may make a proposal to make, amend, or repeal a by-law (Sec. 98.5) and may include in the proposal nominations for the election of directors if the proposal is signed by shareholders holding not less than five percent of the shares in aggregate or in a separate class of shares (Sec. 131.4).

Directors and shareholders entitled to vote at an annual meeting may make a proposal to amend the articles (Sec. 169).

Any amendment must be sent to the Director (Sec. 167.6).

Corporate Finance:
All shares of a corporation must be registered and without par value (i.e with no face value on the share) (Sec. 24) and a securities register must be maintained within the province (Sec. 46).

Each share entitles the owner of the share to a vote at the shareholder meetings (sec. 24(4)). If a corporation has only one class of shares, unless the articles provide otherwise, each shareholder has the right to vote at any shareholder meeting, to receive any dividends declared by the corporation, and to receive the remaining property of the corporation upon dissolution (Sec. 24.4).

Where there are more than one class of shares, the rights of each class must be set out (Sec. 24.3).

Directors and Shareholders:
The directors, the number of which is to be designated by the by-laws, exercise the power of the corporation through the employees, and direct the management of the business and affairs of the corporation (Sec. 97). No corporation with listed shares can have less than three directors at least two of whom are not officers or employees of the corporation (Sec. 97.2).

Directors are not required to be shareholders in the corporation (Sec. 100.2). A majority of shareholders must be Canadian, and directors may be appointed to any office of the corporation (Sec. 116). Directors must be elected at a meeting of shareholders by ordinary resolution and shareholders may be ordinary resolution at a special meeting remove any directors from office (Sec. 104).

A director or officer who is a party to a material contract or who has a material interest in a material contract with the corporation must disclose in writing to the corporation the nature and extent of his interest and failure to comply may result in the court setting aside the contract (Sec. 115).

Directors of a corporation are jointly and severally liable to employees for all debts not exceeding six months wages for services performed for the corporation (Sec. 114).

Annual Shareholder Meeting:
Subject to the articles, the annual shareholder meeting must take place within the province (Sec. 126) and must be called by the directors to be held no later than eighteen months after the corporation comes into existence and not more than fifteen months after the last annual shareholder meeting. Special meetings can be called at any time (Sec. 127). Shareholders must receive at least twenty-one days notice for shareholder meetings (Sec. 129).

Voting at all shareholder meetings is based on one share one vote, in other words, the more shares one holds the more votes one is entitled to (sec. 24(4).

At the annual meeting, the directors must place before the shareholders comparative financial statements, report of the auditor, if any, and any further information respecting the financial position of the corporation as required by the articles, by-laws or any unanimous shareholder agreement (Sec. 149) which have been signed and approved by at least one or more directors (Sec. 152) and accompanied by the report of the auditor of the corporation, if any (Sec. 152.2). Statements that are approved by the director must be sent to the shareholders not less than twenty-one days before the meeting (Sec. 153).

The shareholders must, by ordinary resolution, appoint at the annual meeting to hold office until the close of the next annual meeting (Sec. 156) provided the auditor remains independent (Sec. 155) and the shareholders may remove him by ordinary resolution (Sec. 159).

A unanimous shareholder agreement that restricts the powers of the directors to manage the business and affairs of the corporation is valid (Sec. 97).

Records, Filing, Penalties and Dissolution by the Registrar:

Corporate Records:

Corporation must at all times have a registered office within Manitoba (Sec. 19) where the following official records must be kept (Sec. 20):

- the articles and by-laws and all amendments thereto, and a copy of any unanimous shareholder agreement
- minutes of meetings and resolutions of shareholders
- adequate accounting records
- register of directors
- securities register listing names and addresses of each shareholder, the number of shares owned and the date of the issuance and transfer of each share

A notice of the registered office and change of address and articles of incorporation must be sent to the Director (Sec. 8,19). Every corporation must send an annual return in prescribed form to the Director. (Sec. 121)

Directors and shareholders are entitled to examine the records (Sec. 21).

A Corporation must produce and maintain its records and the corporation must take reasonable precautions to prevent loss or destruction and fabrication, and must facilitate detection and correction of inaccuracies in the register and other records (Sec. 22)

Upon the application of a shareholder, the Court may issue an order directing the investigation of the corporation and any order the Court deems appropriate if appears that the business of the corporation or its affiliates has been carried on fraudulently,in a manner that is oppressive, or unfairly prejudicial to any interested security holder (Sec. 222).

Contravention by anybody of any provisions of the Act or regulation for which no specific punishment is provided is guilty of an offence and is liable on summary conviction to a fine of $500.00. (Sec. 243)

C) Review of the Manitoba Co-operatives Act: Legal Obligations

Any three or more people may apply to the Registrar for incorporation as a co-operative (sec. 8). The application must include the articles of incorporation in a form approved by

the Registrar which addresses, among other matters, the name of the co-operative, the share structure of the co-operative, if is a co-operative with shares, restrictions on the business of the co-operative etc. (sec. 9(1)). The articles of incorporation may be changed by a special resolution (sec. 297). A special resolution requires that more than two-thirds of the voters must approve a motion (sec. 1).

By-laws

The co-operative shall forward the Registrar a copy of the by-laws as adopted at the first meeting of the co-operative within thirty days of adoption of the by-laws (sec. 11(1)). The by-laws must comply with sections 12 "By-laws: mandatory provisions" and "other provisions." Co-operatives must be organized on a co-operative basis as described in section 4(1), "Co-operative basis," of the Act.

The members of the co-operative may, in compliance with the Act, amend the by-laws at an annual or special general meeting. The directors may also make changes to the by-laws, unless the by-laws state otherwise. Amendments made by the directors must be presented to the membership at its next general meeting for review, approval or rejection (sec. 179).

Membership and Meetings

Eligibility for membership is established in the by-laws, and requires a purchase of the minimum number of shares, or the payment of the required membership fee (in the case of Co-operatives without share capital) as stipulated in the by-laws. The directors (sec. 219) must approve new members. The directors may, through a special resolution terminate the membership of a member of the co-operative (sec. 244). The termination of membership can be appealed to the membership at a general meeting (sec. 244).

Members have a voting right on a one member one-vote basis regardless of if shares are held or the number of shares held (sec, 4(1), sec. 40). The co-operative must hold annual membership meetings and the directors may call a special membership meetings at any time, provided that notice is given to members in accordance with the by-laws (sec. 224, 226). The directors must hold a special membership meeting when requested to do so in writing by at least five percent of the members eligible to vote (a higher percentage may be stipulated by the by-laws but not to exceed twenty percent) (sec. 240).

The directors must present the members with comparative financial statements and the auditors report, if an auditor has been appointed, at every annual general meeting (sec. 257).

Directors

The directors of the co-operative "direct the management of the business and affairs of the jco-operative" (sec. 177). The powers of the directors may be limited either in the articles of incorporation or in a unanimous agreement of the co-operative (sec. 217). Directors are potentially jointly liable for a maximum of six months unpaid wages to employees of the co-operative (sec. 206).

Finances

The co-operative, if is has membership shares, establishes the minimum shares for membership in it articles of incorporation and the by-laws. The co-operative may borrow funds from its members as the by-laws of the co-operative provide (sec. 36) The Manitoba Co-operatives Act allows for the issuance of investment shares under specific conditions. These shares do not carry voting rights in the affairs of the co-operative although a co-

operative can make provision for the holders of investment shares to elect a fixed number, or a percentage, of the directors of the co-operative (sec. 42).

Allocation of Surplus
Any surplus remaining after allocation to reserves, is allocated to each of the members of the surplus "proportionate to the business done by ... (each) member with or through the co-operative in that financial year" (sec. 53).

Reporting and penalties
Every co-operative must provide the Registrar with an annual return as prescribed by the Registrar along with a processing fee (sec. 32).

Penalties
Contravention of the Act could result in a fine not exceeding $500 for each offence (sec. 374).

D) Review of the Manitoba Corporations Act: Corporations Without Share Capital (non-profit Corporations): Legal Obligations
Three or more people may incorporate in Manitoba under the Corporations Act (sec. 269) to undertake "patriotic, religious, philanthropic, charitable, educational, agricultural, scientific, literary, historical, artistic, social, professional, fraternal, sporting or athletic nature or the like" (sec. 267).

The applicants must submit the articles of incorporation in the form prescribed by the Director and must include the following:
- the name of the corporation;
- the restrictions on the undertaking that the corporation may carry on;
- that the corporation has no authorized share capital and is to be carried on without monetary gain to its members, and that profits or other accretions to the corporation are to be used in furthering its undertaking;
- the address of the registered office;
- the number of directors (sec. 6, 268);
- the articles may state that property remaining after dissolution " may be distributed among all the members or among the members of a class or classes of members or to one designated organization or more, or any combination thereof"(sec. 277, (1)).

"The articles may set out provisions.... to be set out in the by-laws of the corporation" (sec. 6). The articles of the corporation without share capital may be changed, including the changing the restrictions on activities and purposes, by a special resolution (sec. 167).

A special resolution is a resolution
"(i) passed by a majority of not less than two-thirds of the votes cast by the [members) who voted in respect of that resolution, or signed by all the [members) entitled to vote on that resolution" (sec. 1).

By-laws
The directors of a corporation may make by-laws relating to membership in the corporation, including by-laws, which establish:
- "the qualifications of and the conditions of membership";
- "the fees and dues of members";

- "the suspension and termination of membership by the corporation;
- where the articles provide that the interest of a member is transferable, the method of transfer of membership;
- the qualifications of, and the remuneration of, the directors;
- the time for and the manner of election of directors;
- the time and place, and the notice to be given, for the holding of meetings of the members and of the board of directors, the quorum at meetings of members, the requirement as to proxies, and the procedure in all things at meetings of the members and at meetings of the board of directors; and
- the conduct in all other particulars of the affairs of the corporation" (sec. 275).

Unless the by-laws state otherwise, the by-laws may be changed or amended by the directors (sec. 98). The directors must submit the by-law or amendment to the next general membership meeting for approval, amendment or rejection by an ordinary resolution (i.e. a resolution passed by a simple majority of the members at the meeting) (sec. 1, 98).

Membership and Meetings

People can be admitted as members by a resolution of the directors, but the by-law may stipulate that "(a) that the resolution is not effective until confirmed by the members in general meeting and (b) that members may be admitted ex officio" (i.e. based on the office/position that they hold) (sec. 272).

There is no limit on the number of members in the corporation unless stipulated in the by-laws (sec. 271). The articles or by-laws "may provide for more than one class of membership". The terms and conditions of each class of shares must be stated in the articles of incorporation or the by-laws (sec. 271). Membership is not transferable unless allowed by the articles of incorporation (sec. 273).

Meetings

The directors must call an annual member meeting and may at any time call a special meeting of the members, (i.e. a member meeting other that an annual meeting) (sec. 127). According to section 129(5), all "business transacted at a special meeting of [the members) and all business transacted at an annual meeting of shareholders, except consideration of the financial statements, auditor's report, election of directors and reappointment of the incumbent auditor, is deemed to be special business." "Notice of a meeting of shareholders at which special business is to be transacted shall state:

(a) the nature of that business in sufficient detail to permit the [member) to form a reasonable judgement thereon; and
(b) the text of any special resolution to be submitted to the meeting" (sec. 129).

Members may propose business to be discussed at the annual general meeting (sec. 131).

Finances

The directors must present the members with financial statements, for the proceeding year-end, at each annual member meeting (sec. 149).

If the articles of incorporation do not stipulate how property remaining after dissolution is to be distributed, the corporation must pass a special resolution stating that any property remaining after dissolution be distributed "to any organization in Canada the undertaking of which is charitable or beneficial to the community" (sec. 277).

Directors

The directors are empowered to "direct the management of the business and affairs of the corporation" (sec. 97). The corporation must have at least three directors (sec. 269).

The members may remove directors from office by an ordinary resolution at a special meeting (sec. 104(1)). A special meeting is any membership meeting other than the annual membership meeting.

Reporting and Penalties

The directors must send the Director copies of the financial statements presented at the annual meeting (sec. 154(1)). A Corporation must file annual returns, in the form prescribed by the Director with the Director. (sec.121)

Penalties

A person who is guilty of contravening the Act is liable to a fine of $5,000 (sec. 242).

New Brunswick

A) New Brunswick Day Care Regulations of the Family Services Act

References to Form of Incorporation and Parental Involvement

Incorporation

Licenses to operate a child care facility can only be issued to an incorporated business or organization (sec. 3(3)). In the case of an incorporated non-profit organization the board of directors must consist of no less that seven directors elected at an annual public meeting (sec. 3(3)(b)). At least twenty-five percent of the Directors of a non-profit child care centre must be parents of children attending the child care centre (sec. 26(2)).

Parental Involvement

"The Board of Directors of a non-profit day care center shall, subject to the criteria and standards prescribed by this Regulation or the Minister, determine policies respecting

- the overall supervision and administration of the day care center;
- the hiring of personnel;
- the preparation of budget reports;
- the establishment of program orientation;
- fund raising; and
- liaison with other community services" (sec. 26(1)).

The Regulations state that the directors must also ensure that minutes of regular and annual meetings are kept (sec. 26(3)).

B) Business Corporations Act of New Brunswick: Legal Obligations

Incorporation under the Business Corporations Act enables a business a series of benefits such as: perpetual existence; the power and capacity of a natural person; the ability to raise capital through issuing shares, while limiting the liability of the investors to the amount they have invested in the company. Each common share entitles its holder to one vote at members meeting, thus the more shares held by a member the greater the number of votes the member is entitled to. Directors are elected by the members and act on their behalf in carrying out the management of the company. Incorporation gives rise to a series of legal obligations to which the following section gives a general overview. Reporting companies (i.e. those who trade shares publicly) are subject to additional regulation.

Articles of Incorporation and By-laws

The Articles of Incorporation establish the terms and conditions of incorporation. The articles form the core of the application for incorporation, submitted to the province's Director. Any fundamental changes to the incorporating articles such as creating new class of shares, changing the designation of shares, changing the kind of shares of any class, changing the number of shares of same class, dividing class of shares, altering restrictions on business activities and changing the name of the corporation (Sec. 113) must be affected by special resolution or may be amended by directors without approval of shareholders if so authorized by special resolution (a resolution requiring approval by at least two-thirds of the members) (Sec 113.2).

Any amendments that are adopted must be sent to the Director (Sec. 116) who then issues certificate of amendment (Sec. 117).

Unless the articles, the by-laws or a unanimous shareholder agreement provides otherwise, the directors may be resolution, make, amend, or repeal any by-laws that regulate the business or affairs of the corporation (Sec. 61.1).

The directors must submit any amendment to the shareholders at the next shareholder meeting that may then confirm, reject, amend or repeal the by-law (Sec. 61.2).

A shareholder entitled to vote at an annual meeting may make a proposal to make, amend, or repeal a by-law (Sec. 61.5) and may include in the proposal nominations for the election of directors if the proposal is signed by a shareholder holding not less than ten percent of shares in aggregate or in separate class of shares (Sec. 89.4).

Directors and shareholders entitled to vote at an annual meeting may make a proposal (Sec. 89) to amend the articles (Sec. 114).

Corporate Finance:
All shares of a corporation must be registered (Sec. 46.1) and a central share register must be maintained by the corporation within the province (Sec. 48.3). Shares may be with or without a nominal par value or both (Sec. 22.1).

If a corporation has only one class of shares the rights of all shareholders must be equal in all respects, including the right to vote at any shareholder meetings, to receive any dividends declared by the corporation, and to receive the remaining property of the corporation on dissolution (Sec 22.2).

The article of incorporation may provide for more than one class of shares (Sec. 22.3) and the rights, privileges, restrictions and conditions of shares of each class must be set out in the articles and those rights contained in Sec. 22.2 must be attached to at least one class of shares.

Directors and Shareholders:
The directors, the number of which to be designated by the by-laws (Sec. 60.2) manage the affairs of the corporation (Sec. 60.1) and no corporation with lists shares can have less than three directors (Sec. 60.3). Directors do not have to be shareholders, unless otherwise stipulated in the articles (Sec. 63.2) and directors may be appointed to any office of the corporation (Sec. 78). Directors must be elected at a meeting of shareholders and shareholders may by ordinary resolution at a special meeting remove any directors from office (Sec. 67.1). A director or officer who is a party to a material contract or who has a material interest in a material contract with the corporation must disclose in writing to the corporation the nature and extent of his interest and failure to comply may result in the Court setting aside the contract (Sec. 77).

While the directors are to act honestly and with good faith and with reasonable prudence in the best interests of the corporation and comply with the articles, regulations, by-laws and any unanimous shareholder agreement, no contract, articles, by-laws or resolutions may relieve a director from the duty to act in accordance with the Act or relives him from liability for a breach of the Act (Sec. 79).

Annual Shareholder Meeting:
Subject to the articles, the annual shareholders meeting must take place within the province (Sec. 84) and must be called by the directors to be held no later than eighteen months after incorporation and not more than fifteen months after the last annual shareholder meeting. Special meetings can be called at any time (Sec. 85). Shareholders must receive at least twenty-one days notice for shareholder meetings (Sec. 86.2).

At the annual meeting, the directors must place before the shareholders comparative financial statements and any further information respecting the financial position of the corporation as required by the articles, by-laws or unanimous shareholder agreement (Sec. 100) prepared in accordance with generally accepted accounting principles (Sec. 100.3) which have been signed and approved by at least one director and by a report prepared by an auditor if one has been appointed (Sec. 102.2). Statements which are approved by the director must be sent to the shareholders not less than twenty-one days before the meeting (Sec. 103.1).

A unanimous shareholder agreement that restricts the powers of the directors to manage the business and affairs of the corporation is valid (Sec. 99.2).

Records, Filing, Penalties and Dissolution by the Registrar:
Corporate Records:
Corporations must at all time have a registered office within New Brunswick (Sec. 17) where the following must be kept:

- copies of articles and the by-laws all amendments to the articles and the by-laws, copy of any unanimous shareholder agreement;
- minutes of all meetings and resolutions of shareholders;
- copies of all notices including notice of directors (Sec. 64 and 71);
- a share register that comprises a list of names and addresses of shareholders, number of shares held by each shareholder, and the date and particulars of the issue and transfer of each share (Sec. 48).

A notice of registered office and change of address and articles of incorporation must be sent to Director (appointed by Minister of Justice) (Sec. 17). Directors and shareholders of a corporation are entitled to examine the records (Sec. 19). Creditors of a corporation may examine by-laws and amendments, notices, and share register of corporation (Sec. 19.3).

Corporations must file an annual return in form prescribed by Regulations signed by director or officer of corporation with the Director (Sec. 187.1).

Upon an application by a shareholder holding not less than ten percent of shares of any class, the Court may issue an order directing an investigation into the corporation and any of its affiliates (Sec. 155). The Director or any interested person may apply to the Court for an order dissolving the corporation if the corporation has failed for two or more consecutive years to hold shareholder meetings (Sec. 140).

C) The New Brunswick Co-operative Associations Act: Legal Obligations

The co-operative may be formed by three or more individuals that submit the letters of incorporation (sec. 5(2)). The Act enables the incorporation of associations operated on a co-operative basis: i.e.

- each member has at least one share
- each member has only one vote
- interest on shares is limited by the letters of incorporation or the by-laws
- any surplus beyond that allocated to reserves or allocated as interest payment to members is allocated in proportion to the "volume of business they have done with or through the association" (sec. 1).

A co-operative may be with or without capital divided into shares (sec. 5(1)).

The letters of incorporation submitted to the Director in application for incorporation, as a co-operative must include a fee and state:

- the name of the co-operative
- the objectives of the co-operative
- the name and address of each member
- *in the case of an association with shares:*
  the par value of each share
- *in the case of association without shares:*
  the annual "or other periodic membership fees" prescribed by the by-laws (sec. 7).
  a copy of the by-laws (sec. 11(1)).

The objectives of the co-operative as stated in the letters of incorporation may be altered by an extraordinary resolution (sec. 16(1)). Extraordinary resolutions must be passed by seventy-five percent of the members eligible to vote at the general meeting for which proper notice has been provide to the members as stipulated in the by-laws (sec. 1) and must be approved by the New Brunswick Inspector of Co-operatives (sec. 30).

By-laws

The co-operative must adopt by-laws that address at a minimum the matters prescribed in the regulations (reg. 44). The by-laws may be changed at a special or an annual general meeting where a notice with the exact proposed changes has been provided to the membership at least ten days before the meeting. Such motions must be approved by at least two-thirds of the members eligible to vote at the meeting (reg. 45).

Membership and Meetings

"The members of the co-operative have the right and responsibility:

- to elect directors and members of committees and to remove them from office for cause
- to hear and pass judgement upon the reports of the officers, ...(and staff and committees)
- to determine the method of distributing the net earnings
- to make the final decision regarding any major changes in the financial policy
- to act as final arbitrators in any dispute that may arise between the board of directors and any committees individual members
- to determine what amendments shall be made in the by-laws, and
- to exercise its final authority in all other matters vitally affecting the association as a co-operative body and as a business association" (reg. 29).

Applicants for membership must meet the criteria established by the by-laws and must be approved by the directors of the co-operative (sec. 22). A member may be "excluded from membership" by a resolution of the board of directors. The member so excluded is entitled to a refund for shares and has the option of an appeal to the general membership (sec. 27(2)). A member may nominate a person to whom the member's shares are to be transferred in the case of the member's death (sec. 26).

Membership Meetings

Every association must hold an annual general membership meeting within four months of the co-operatives fiscal year-end (sec. 28). A special membership meeting "may be called at any time in the manner set forth in the by-laws of the association" (sec. 28). Notice for general membership meetings must be provided as stipulated in the by-laws. All members are entitled to only one vote per member at the general meetings regardless of the number of votes held by the member (sec. 28). The directors must provide the membership with financial statements at each annual general membership meeting (sec. 40).

The directors may call special meetings as the need arises and they must call a special meeting when requested to do so in writing by at least ten percent of the members (reg. 28).

Directors

The "affairs of the co-operative shall be managed by the board of directors" made up of at least three directors elected from the membership. The duties of the directors are stipulated in the by-laws (sec. 31). The directors are elected at the annual general meetings (reg. 30). A director may be removed from the board before her/his term expires by a vote of "not less than two-thirds of the members who are present" at the annual meeting or at a special meeting called to remove the director (sec.31(6)).

Finances

The maximum number of shares a member may hold is limited by the by-laws (reg. 17). Members may receive interest on their shares at a rate of interest at or less than the maximum rate stipulated in the by-laws (reg.18). The co-operative may, if stipulated by the by-laws, borrow money from its members (sec. 33).

The co-operative may, if allowed by the by-laws, distribute any surplus income, after an allocation to reserves, to its members in proportion to their use of the co-operatives services (sec. 34 (4)). Such funds may be allocated directly to the members, allocated to share purchases in the member's name or borrowed from the member for stipulated period of time at a rate not to exceed the rate set in the by-laws (sec. 36 (1)).

Recording, Reporting and Penalties

Co-operatives must keep a list in its registered office which includes the names and addresses of members, and the date membership commenced and ceased (sec. 21).

Proper financial records must be kept at the registered office (sec. 40).

Within two weeks of the annual general meeting the co-operative must send to the Inspector a general statement as stipulated by the Inspector as to the affairs of the co-operative including financial statements. The co-operative must provide the Inspector with copies of all notices of general membership meetings and a copy of the agenda for the meeting (sec. 41).

Penalties
Individuals acting in contravention of the Act are liable for fines of up to $2,500 for each week the contravention continues. Associations are liable for fines of up to $5,000 for each week they are in contravention (sec. 60).

D) New Brunswick Companies Act (Non-Profits): Legal Obligations
This is a letters patent system whereby people wishing to incorporate must apply to the minister for the granting of a charter. An application for incorporation for "charitable, philanthropic, temperance, religious, social, political, literary, educational, athletic, or other like purposes" must include a request to have embodied in the letters patent a clause stating that the company shall hold all property and profit in trust and that no dividends will be declared or paid (s.18(1)). Once incorporated the company has the powers to enter contracts, purchase any property, raise money, etc.(s.14).

Incorporation and By-laws
Three or more people, over the age of 19 may apply to the minister for granting of a charter (s.4(1)). The application must include (a)the name of the company followed by limited or ltd. or incorporated or inc., (b) the purpose of incorporation, (c) the place in New Brunswick where the head office will be located (s.6(1)). The application must use the form prescribed by regulation(s.7(1)). To change or add to the letters patent there must be a by-law passed by two-thirds majority at a special general meeting authorizing the directors to apply to the minister for supplementary letters patent.(s.43) The by-laws are made by the directors but they must not be contrary to law or the letters patent of the company (s.96(1)).

Members
The company (i.e., directors) may make by-laws to determine the qualifications for membership (s.18(d)). Each member has one vote at the annual general meeting or any special general meeting (s.103(b)). Persons named in the letters patent are directors until duly replaced (s.87(5)). The board must have not less than three directors (s.87)1)). Directors are elected at a general meeting as prescribed in the letters patent for a term not exceeding two years (s.91). General meeting of the shareholders must be held at least annually and unless otherwise provided in the letters patent there must be fourteen days notice of a general meeting (s.101 & s.104). At every annual general meeting the directors must show the members a full statement of the affairs and financial position of the company (s.123). The financial statement must include profits and losses, a balance sheet showing all assets, statements of surplus and the report of the auditors (s.124).

Members with one tenth of the votes may by written requisition call a special general meeting (s.102). Finally, subject to the letters patent, a resolution in writing signed by all members is valid as if passed at a general meeting (s.103.1(1)).

Recording, Registering and Penalties
Books containing (a) the letters patent, any supplementary letters patent and all by-laws (b) an alphabetical listing of all members (c) addresses of all members (d) amounts paid in by members (e) the names and address of all directors (f) the minutes of all the meetings, must be kept at the head office (s.104). Any person who wishes to inspect the books may do so at the head office during normal business hours (s.2(2)). Failure to permit the inspection results in a $50 fine or three months in prison. Any director, officer, or servant who knowingly makes

untrue entries in the books is criminally liable and liable for any damage that may arise (s.108). An annual statement must be sent to the minister before the last day of the anniversary month – failure to do so is an offence punishable on summary conviction (s.126). Must notify the minister of a change in the board of directors within fifteen days of the change (s.87(6)).

Newfoundland

A) Newfoundland Business Corporations Act: Legal Obligations

Incorporation under the Business Corporations Act enables a business a series of benefits such as: perpetual existence; the power and capacity of a natural person; the ability to raise capital through issuing shares, while limiting the liability of the investors to the amount they have invested in the company. Each common share entitles its holder to one vote at members meeting, thus the more shares held by a member the greater the number of votes the member is entitled to. Directors are elected by the members and act on their behalf in carrying out the management of the company. Incorporation gives rise to a series of legal obligations to which the following section gives a general overview. Reporting companies (i.e. those who trade shares publicly) are subject to additional regulation.

Articles of Incorporation and By-laws

The Articles of Incorporation establish the terms and conditions of incorporation. The articles form the core of the application for incorporation, submitted to the province's Director. Any fundamental changes to the incorporating articles such as creating new class of shares, changing the designation of shares, changing the kind of shares of any class, changing the number of shares of same class, dividing class of shares, altering restrictions on business activities and changing the name of the corporation (Sec. 279) must be affected by special resolution or may be amended by directors without approval of shareholders if so authorized by special resolution (Sec 279.2).

Unless the articles, the by-laws or a unanimous shareholder agreement provides otherwise, the directors may by resolution, make, amend, or repeal any by-laws that regulate the business or affairs of the corporation (Sec. 170). The directors must submit any amendment to the shareholders at the next shareholder meeting the shareholders may then confirm, reject, amend or repeal the by-law (Sec. 170.2).

A shareholder entitled to vote at an annual meeting may make a proposal to make, amend, or repeal a by-law and may include in the proposal nominations for the election of directors if the proposal is signed by a shareholder holding not less than five percent of shares in aggregate or in separate class of shares (Sec. 226).

Directors and shareholders entitled to vote an annual meeting may make a proposal (Sec. 224) to amend the articles (Sec. 283).

Any amendments that are adopted must be sent to the Registrar (Sec. 285) who then issues certificate of amendment (Sec. 286).

Corporate Finance:

All shares of a corporation must be registered and must be without nominal or par value (Sec. 46) and the corporation within the province (Sec. 96-98) must maintain a central share register.

If a corporation has only one class of shares the rights of all shareholders must be equal in all respects, including the right to vote at any shareholder meetings, to receive any dividends declared by the corporation, and to receive the remaining property of the corporation on dissolution (Sec 47).

The article of incorporation may provide for more than one class of shares (Sec. 48) and the rights, privileges, restrictions and conditions of shares of each class must be set out in the articles and those rights contained in Sec. 47 must attach to at least one class of shares.

Directors and Shareholders:
The directors manage the affairs of the corporation (Sec. 167) and no corporation that lists shares can have less than three directors, two of which must not hold office or be employees of the corporation (Sec. 168) and a majority of shareholders must be resident Canadians (Sec. 174). Directors may be appointed to any office of the corporation (Sec. 202). Directors must be elected at a meeting of shareholders and shareholders may by ordinary resolution at a special meeting remove any directors from office (Sec. 179).

A director or officer who is a party to a material contract or who has a material interest in a material contract with the corporation must disclose in writing to the corporation the nature and extent of his interest and failure to comply may result in the Court setting aside the contract (Sec. 198).

Annual Shareholder Meeting:
Subject to the articles, the annual shareholders meeting must take place within the province (Sec. 215) and must be called by the directors to be held no later than eighteen months after incorporation and not more than fifteen months after the last annual shareholder meeting. Special meetings can be called at any time (Sec. 217). Shareholders must receive at least twenty-one days notice for shareholder meetings (Sec. 221).

At the annual meeting, the directors must place before the shareholders comparative financial statements and any further information respecting the financial position of the corporation as required by the articles, by-laws or unanimous shareholder agreement which have been signed and approved by at least one director and by a report prepared by an auditor (Sec. 258).

Statements which are approved by the director must be sent to the shareholders not less than twenty-one days before the meeting (Sec. 262).

A unanimous shareholder agreement that restricts the powers of the directors to manage the business and affairs of the corporation is valid (Sec. 245).

Records, Filing, Penalties and Dissolution by the Registrar:
Corporate Records:
Corporations must at all times have a registered office within Newfoundland (Sec. 36) where the following must be kept:

- copies of articles and the by-laws all amendments to the articles and the by-laws, copy of any unanimous shareholder agreement
- minutes of all meetings and resolutions of shareholders
- copies of all notices including notice of directors (Sec. 175 and 183)
- a share register that comprises a list of names and addresses of shareholders, number of shares held by each shareholder, and the date and particulars of the issue and transfer of each share (Sec. 96).

A notice of registered office and change of address and articles of incorporation must be sent to the Registrar (Sec. 34).

Corporations must file an annual return with the Registrar in a form prescribed by Regulations signed by director or officer of corporation (Sec. 408).

Directors, shareholders and creditors of a corporation are entitled to examine the records (Sec. 42).

A corporation must prepare and maintain its records (Sec. 37) and the corporation must take reasonable precautions to prevent loss or destruction, and falsification, and must facilitate detection and correction of inaccuracies in the register of records (Sec. 41).

The Registrar or any interested person may apply to the Court for an order dissolving the corporation if the corporation has failed for two or more consecutive years to hold shareholder meetings (Sec. 342).

A person who is guilty of an offence under this Act for which no penalty is specifically provided is liable on summary conviction to a fine not exceeding $500 (Sec. 516).

B) Review of the Newfoundland Co-operatives Act: Legal Obligations

Three or more individuals may incorporate as a co-operative under the Act (sec. 7). A co-operative must operate on a co-operative basis. According to section 3 of the Act, a co-operative is "organized, operated and administered on a co-operative basis when:

- a member or delegate has not more than one vote;
- a member or delegate is not entitled to vote by proxy;
- business is carried on primarily for the benefit of members;
- membership in the co-operative is voluntary and available, without artificial restriction or unlawful basis of discrimination, to a person who can use its services and is willing to accept the responsibilities of membership;
- the limit on the interest or dividends on share capital that it pays does not exceed the rate prescribed by regulation or in the co-operative's by-laws; and
- a surplus or saving arising out of the operation of the co-operative is
  - (i) used to eliminate a deficit,
  - (ii) used to develop its business,
  - (iii) used to provide or improve common services to members,
  - (iv) distributed among members in proportion to their patronage with the co-operative,
  - v) used to educate its members, officers or employees or the general public in the principles and techniques of economic and democratic co-operation, and
  - vi) distributed to a community based non-profit, charitable or benevolent organization."

To approve the application for incorporation as a co-operative the Registrar must be satisfied that the organization will operate on a co-operative basis (sec. 9). The Registrar can dissolve the co-operative if it is not operating on a co-operative basis (sec. 118).

An application for incorporation must include the articles of incorporation and by-laws.

Articles of Incorporation

The articles incorporation must include the following information:

a) "the name of the co-operative;
b) the place of business of the co-operative;
c) where there is share capital
  (i) the par value of the shares,
  (ii) the maximum number of shares where shares are limited,
  (iii) a statement that the shares are limited or unlimited, and

(iv) where there are common and preferred shares, the par value of each share and special preferences, rights, conditions or restrictions attaching to each class of shares;

d) a statement of the minimum and maximum number of directors;

e) the objects and purposes of the co-operative;

f) the fiscal year of the co-operative;

g) any restriction to be applied to the business or businesses of the co-operative." (sec. 8)

The articles can be amended by the members through a special resolution i.e. a resolution passed by two-thirds of the members at a meeting, called to approve the resolution, for which proper notice has been provided (sec. 99, 2.(t)). The resolution must be approved by the Registrar for the amendment to come into effect (sec. 101).

By-laws

The co-operative may make by-laws which "are necessary or desirable for the procedure or governing of the co-operative and the implementation of things required under" the Act (sec. 10). By-laws are put in place by the by-law being presented to the members at an annual general or a special meeting. The by-law must be approved by a majority of the members at the meeting. Members must be given at least thirty days written notice of a meeting at which a by-law adoption or change is to be presented and voted on. The notice must include the by-law, or by-law change, being proposed (sec. 80). No by-law is in effect until approved by the Registrar (sec. 80 (5)).

Members and Meetings

A member in a co-operative is a shareholder in the co-operative. A person must also qualify for membership as per the co-operative's by-laws (sec. 2(n)). Each member is entitled one vote at annual general meetings and special meetings (sec. 78). Members may withdraw from membership in the co-operative according to the procedures stipulated in the by-laws (sec. 84). These procedures must contain provisions for buying back a member's common shares and paying back loans from the members (sec. 84). "Members may terminate the membership of a member where (a) that member has received at least ten days' notice from the board of the meeting at which his or her membership is to be considered; and (b) the termination is approved by a majority of the board" (sec. 84). A decision to terminate a member's membership is subject to an appeal by the member to the general membership at which point the members may approve of reject the termination (sec. 85).

Meetings

The co-operative must hold an annual general meeting not more than four months after the fiscal year-end (sec. 69). At the annual general meeting voting members are entitled to "submit a proposal on a matter which he or she wishes to discuss" (sec. 79). The directors must call a special membership meeting if requested to so in writing by at least ten percent of the membership (where there are more than 50 members), or a majority of the members in co-op of less then fifty members. The meeting must be called within twenty days of the receipt of the request (sec. 70). The Registrar of co-operatives may also call a special meeting. Members must be provided with at least ten days, and not more then thirty days notice of a general meeting. Where there is special business or a special resolution (such as the change in article of incorporation or by-laws) the business or the resolution must be stated on the notice (sec. 74).

Directors

A board of directors, of at least three directors, shall conduct the business of the co-operative on behalf of the members (sec. 35). The members on a one member one-vote basis at the annual general meeting elect the board. The directors must be members of the co-operative (sec. 36). A director can be removed at a general or special meeting by a two thirds-majority vote (sec. 49). Non-members (those that do not hold common shares) that hold preferred shares are not allowed to vote for directors, unless the articles of incorporation allow for preferred share holders to elect one director (sec. 35).

Director Liability (sec. 42 of the Act)

Directors are jointly and individually liable for loss or damage suffered by the co-operative where the directors, without the approval of the membership, vote for, authorize or approve-

"(a) the payment of remuneration to directors;
(b) an acquisition or purchase of common shares other than the co-operative's own shares;
(c) the purchase of shares in the co-operative;
(d) the payment of a dividend or interest on shares;
(e) a loan or guarantee or the giving of financial assistance;
(f) a payment of an indemnity to a director or a former director; or
(g) an act contrary to this Act or the articles or by-laws of the co-operative."

Financial

Shares

The common shares in a co-operative are at par value (i.e. face value) (sec. 53, reg. 46). They do not appreciate or depreciate over time. The shares must be purchased by the co-operative from the member when she or he leaves the co-operative at the par value of the shares owned by the member. Members are able to receive interest on their shares as stipulated in the by-laws, but may have to wait for up to six months for payments on interest or shares upon leaving the co-operative (sec. 60). The shares are transferable, if allowed by the by-laws (sec. 63). The directors must approve any such transfer, or a person authorized by the directors (sec. 65). The member of the co-operative is not liable beyond the amount unpaid on the members share purchase (sec. 54).

The co-operative may issue non-common shares that do not entitle the owner to a vote in the governance of the co-operative (sec. 53).

The directors must present the financial statements, pertaining to the previous fiscal year, to the members at the annual general meeting (sec. 89). These statements must be available to members upon request at least ten days before the annual general meeting (sec. 90).

A co-operative must at all times have five percent of the share capital of its members on deposit with a credit union or bank (reg. 46(10)). Every co-operative must, each year, transfer five percent of the net surplus for that year to a reserve fund (reg. 40).

Allocation of Surplus

Any financial surplus left at the end of the fiscal year, after dealing with taxes and requirements for financial reserves under the Act, can be allocated to the members "in proportion to the business done by the members with or through the co-operative" (sec. 55).

Register, Reporting and Penalties

According to section 31 of the Act a "co-operative shall prepare and maintain, at its registered office:

- its articles and by-laws, and all amendments to those articles and by-laws;
- minutes of meetings and resolutions of the co-operative;
- minutes of board and committee meetings, including resolutions made at those meetings;
- a list of the names and latest known residential addresses of persons who are or have within the past year been directors or officers, with the dates on which each directorship or office commenced and, where applicable, ended;
- a register of all members, their names and latest known residential address and the number and class of shares held by each member; and
- financial statements of the co-operative including auditor reports."

A co-operative must allow its members to examine these documents, "except where the records are considered by the board of directors to be confidential." (sec. 33).

Reporting

The co-operative must file an annual return in a form as stipulated by the Registrar and a copy of the co-operative's financial statement. The Registrar may require special returns to be filed as the Registrar deems appropriate (sec. 26 (2)). The co-operative must inform the Registrar of changes in directors within thirty days of the change (sec. 39).

Penalties

The Registrar can dissolve the co-operative if the co-operative is not operating in compliance with the Act. An individual who is guilty of an offence under this Act is liable "to a fine of not more than $5,000 or imprisonment for a term of not more than six months or to both the fine and imprisonment. A co-operative that is guilty is liable to a fine of not more than $25,000 (sec. 97).

C) Review of the Newfoundland Corporations Act: Corporations Without Share Capital" (non-profit Corporations)

Three of more people may incorporate in Newfoundland under the Corporations Act (sec. 421, 422) to undertake "patriotic, religious, philanthropic, charitable, educational, scientific, literary, historical, artistic, social, professional, fraternal, sporting or athletic nature or the like" (sec. 420).

The applicants must submit the articles of incorporation in the form prescribed by the Registrar and must include the following:

- the name of the corporation;
- the restrictions on the undertaking that the corporation may carry on;
- that the corporation has no authorized share capital and is to be carried on without monetary gain to its members, and that profits or other accretions to the corporation are to be used in furthering its undertaking;
- the address of the registered office,
- the number of directors (sec. 12, 421).
- that the property remaining after dissolution "be distributed to an organization in the province the undertaking of which is charitable or beneficial to the community" (sec. 430).

"The articles may set out provisions.... to be set out in the by-laws of the corporation" (sec. 12).

The articles of the corporation without share capital may be changed, including the changing the restrictions on activities and purposes, by a special resolution (sec. 279). A special resolution is a resolution

"(i) passed by a majority of not less than 2/3 of the votes cast by the (members) who voted in respect of that resolution, or

(ii) signed by all the (members) entitled to vote on that resolution(sec. 2(ee))."

By-laws

The directors of a corporation may make by-laws relating to membership in the corporation, including by-laws that establish:

- "the qualifications of and the conditions of membership;"
- "the fees and dues of members;"
- "the suspension and termination of membership by the corporation;
- where the articles provide that the interest of a member is transferable, the method of transfer of membership;
- the qualifications of, and the remuneration of, the directors;
- the time for and the manner of election of directors;
- the time and place, and the notice to be given, for the holding of meetings of the members and of the board of directors, the quorum at meetings of members, the requirement as to proxies, and the procedure in all things at meetings of the members and at meetings of the board of directors; and
- the conduct in all other particulars of the affairs of the corporation" (sec. 428).

Unless the by-laws state otherwise the by-laws may be changed or amended by the directors (sec. 17). The directors must submit the by-law or amendment to the next general membership meeting for approval, amendment or rejection by an ordinary resolution (i.e. a resolution passed by a simple majority of the members at the meeting) (sec. 2, 170).

Membership and Meetings

People can be admitted as members by a resolution of the directors, but the by-law may stipulate that "that the resolution is not effective until confirmed by the members in general meeting and that members may be admitted by holding some office outside the corporation" (sec. 425).

There is no limit on the number of members in the corporation unless stipulated in the by-laws (sec. 424). The articles or by-laws may provide for more than one class of membership." The terms and conditions of each class of shares must be stated in the articles of incorporation (sec. 424).

Membership is not transferable unless allowed by the by-laws (sec. 427).

Meetings

The directors must call an annual member meeting and may at any time call a special meeting of the members, (i.e. a meeting other that an annual meeting) (sec. 217). According to section 222, all "business transacted at a special meeting of (the members) and all business transacted at an annual meeting of shareholders, except consideration of the financial statements, auditor's report, election of directors and reappointment of the incumbent auditor, is special

business." "Notice of a meeting of shareholders at which special business is to be transacted shall state:

(a) the nature of that business in sufficient detail to permit the (member) to form a reasonable judgement on it; and

(b) the text of a special resolution to be submitted to the meeting" (sec. 222).

Members may propose business to be discussed at the annual general meeting (sec. 224).

Finances

The directors must present the members with financial statements, for the proceeding year-end, at each annual member meeting (sec. 258).

Directors

The directors are empowered to "direct the management of the business and affairs of the corporation" Sec. 167). The corporation must have at least three directors (sec. 422).

The members may remove directors from office by an ordinary resolution at a special meeting (sec. 179). A special meeting is any membership meeting other than the annual membership meeting.

Reporting and Penalties

The directors must send the Registrar copies of the financial statements presented at the annual meeting (sec. 263). A Corporation must file annual returns, in the form prescribed by the Registrar with the Registrar.(sec.408)

Penalties

A person who is guilty of contravening the Act is liable to a fine of $500 (sec. 516).

Nova Scotia

A) Day Care Act (1989) and Regulations References to Form of Incorporation and Parental Involvement

Non-profit Subsidized Centres

The regulations state that a "non-profit government subsidised facility shall be incorporated under the management of a Board of Directors" (reg. 20.1). No Single group either persons for the community, parents of children in the facility and staff may be a majority on the board (reg. 20.2). The Centre must be administered on behalf of the Directors by a "chief administrative officer" with a "specialized knowledge of and adequate experience in early childhood care and development" (reg.20.4).

Meetings: Parents and Licensed Operator

The regulations stipulate that the licensee shall ensure that parents of children attending the centre have "have an opportunity to meet together not less frequently than once every three months" with representatives of the centre (the licensee and chief administration officer) to discuss items brought forward by the parents and:

- "the programs provided
- equipment and materials available for the children
- staffing patterns and staff qualifications, and
- health and safety practices by and in the facility" (sec. 23).

Parents shall have an opportunity to place items on the agenda and minutes will be kept of the meetings. These minutes must be included with the licensees renewal application for a license to operate a child care centre (reg. 23.4).

B) Nova Scotia Companies Act (Business Corporations): Legal Obligations

Nova Scotia legislation is based on a memorandum of association system of incorporation. The powers and obligations of the corporation are for the most part defined by contract between members in the corporation's articles of incorporation. Only British Columbia has a similar system, whereas most other provinces and the federal Canada Business Corporations Act are based on a system in which the powers and obligations are defined by the incorporation Act (PEI and Quebec have another system: the letters patent form of incorporation).

Incorporation under the Companies Act (hereinafter the Act) enables an company a series of benefits such as: perpetual existence; the power and capacity of a natural person; the ability to raise capital through issuing shares, while limiting the liability of the investors to the amount they have invested in the company (Sec. 26).

Memorandum of Association

The Nova Scotia Companies Act allows for two types of incorporation which limit members liability: a company limited by shares, in which the liability is limited to the shares purchased; and a company limited by guarantee, in which the investors liability is limited by the amount each member agrees to secure/guarantee as stipulated in the memorandum of association (sec. 11). Shareholders are members of the company (sec. 28).

The memorandum stipulates the share structure of the company and the procedures for share transfer, etc. Companies may not carry out business activities that are restricted by

its memorandum of association or in a manner contrary to the memorandum (sec. 26 (10). The provisions of the memorandum may be changed through a "special resolution" (sec. 19 (3)) "to restrict... or abandon restrictions on its objects and powers."

Act also allows for an "unlimited company" in which there is no limit to the liability of its members.

Shares and Finances

All shares within a class of shares must be of equal value (sec. 26 (16)). Shares can only be transferred as described in the articles of association (sec. 32). Companies are able to alter their share structure through a special resolution (sec. 52(2)).

The directors of a company must provide the members/shareholders with annual financial statements (sec. 121). A company must have audited statements presented to the annual general meeting unless all of the members of the company have agreed to forego a audited statements and provided they are not a reporting company (a company with publicly traded shares) (sec.118, reg. 192).

The company may, if allowed by the articles of incorporation, and approved by the members, increase its capital by the creation of new shares (sec. 51). The Act enables companies, if by the articles of association or a special resolution, to raise funds for construction of buildings or plants by selling shares upon which a maximum of six percent interest can be paid (sec. 56, reg. 67).

Registers, Filings and Records

A register must be kept of all members/shareholders (Sec. 42 reg. 206 a). A company incorporated under the Act must have a registered office in the province of Nova Scotia (sec. 79 (1). Records that are open to members and the public must be kept at the office (sec. 43 (1).

Companies must keep, and send to the Registrar, a record of the names and addresses and occupations of their directors, officers and managers (sec. 98). Companies must keep a registry of non-transferable shares, stocks or securities (sec. 111). A notice of any increase in capital must be sent to the Registrar (reg. 206 (d)).

A company incorporated under the Act must have financial records which note the monies received and expended, all sales and purchases of goods, and the assets and liabilities of the company (sec. 120).

Shareholders can have access to the register although the Companies may restrict shareholder access to records through a court order (if the application for the order is approved by the court) (third schedule 10, (3)).

Meetings and Procedures

The incorporated company must hold a general meeting at least once a year and not more than fifteen months after the last meeting (sec. 83). At this annual general meeting the members will "receive and consider the financial statements of the Company, the reports of the Directors and of the auditors, if any;" ... elect directors .... and carry out any other business as described in the Articles of association (sec. 121, reg. 84). Votes at general meetings are allocated on a one share one vote basis i.e. members with more shares are entitled to more votes (reg. 147).

Special Meeting
Notwithstanding the articles of the company, the Act requires that the directors, upon receiving a request from the owners of at least ten percent of the shares, call a special general meeting (sec. 84). If the directors do not call a meeting within twenty-one days of the request, the shareholders making the request may convene the meeting themselves (sec. 84, (3)).

Special Resolution
Special resolutions enable the members of a company to change the company's name, alter the memorandum of incorporation and modify the articles of association (sec. 19 (3)). Such special resolutions must be approved by three-quarters of the members at a general meeting for which notice of the special resolution has been given to the members (sec. 87). Such resolutions can also be passed without a meeting if the written resolution is signed by all of the shareholders (sec. 92).

Minutes
Minutes must be recorded of all shareholder and directors meetings (sec. 89). These must be kept at the registered office and be accessible to any member (sec. 90).

Shareholders/Members and Director(s)
Directors
Every company shall have at least one director (sec. 93) and no more than seven unless a general meeting (reg. 107) approves a greater number. Directors are elected at the annual general meeting until the next annual general meeting (reg. 116). Directors are not required to hold shares in the company (reg. 110) and upon the approval of at least two thirds of the Directors, the Directors may appoint a person as a Director but the total number of Directors may not exceed the maximum (reg. 109). A director must declare any conflict of interest when the directors are discussing a contract in which the director has an interest (sec. 99). Directors may not be bankrupt (sec.96).

Directors may appoint a director to a paid position as administrator of the company (reg. 121-124). Where a company has only one director, the director (reg. 139) shall manage the company.

A dissenting shareholder (one that dissents from the resolutions of a general meeting or directors resolution) may have his/her shares redeemed at "fair value" on application to the company (Act 135 (a)and third schedule sec. 2).

Recording and Penalties
The government of Nova Scotia may appoint inspectors to investigate and report on the affairs of a company if requested to do so by at least holders of at least ten percent of the shares of that company (sec. 115).

A failure to call a general meeting in the stipulated time could result in the company and those "knowingly party to the default shall be liable to a penalty not exceeding two hundred dollars" (sec. 83).

The Registrar may dissolve a company if it is found that the company is not carrying on business or in operation. This would result in the name of the company being removed from the register (sec. 136).

C) Co-operatives Associations Act: Legal Obligations

"The purpose of this Act is to provide for the incorporation, inspection, examination and supervision of associations whose primary purpose is to provide service to its members and which belong to the people who use the services, the control of which rests equally with all the members, and the gains from which are distributed among the members in proportion to the use they make of the services" (sec. 3).

The Act allows for two types of co-operatives:

- an association with capital divided into shares, called an "association limited by shares" which limits members liability to unpaid portion of their prescribed shares;
- an association without capital divided into shares, called an "association limited by membership" (sec. 6), which limits liability to the amount unpaid on their membership fees.

An association limited by shares requires that members invest a stipulated number of par value shares (share with a stated purchase value) whereas an association limited by membership requires that members pay an annual "or other periodic membership fee" (sec. 8) rather than purchase shares.

Incorporation

Incorporation of a co-operative association is though the registration of the "articles of incorporation" form and the by-laws of the co-operative (sec. 6; Schedule). The by-laws must address the specific rules and procedures as stipulated in the regulations (reg. 32).

The Articles of Incorporation (schedule to the Act) form the core of the application to the Registrar to incorporate a association which incorporate to operate on a co-operative basis. It includes the:

- name of the association,
- objectives of the association,
- limits of the liability of the members,
- par value of the shares (in the case of a co-operative with shares), or in the case of an association limited by membership, the membership fees
- the names and addresses of the subscribers to the articles (minimum 3 max of 7),
- a list of a minimum of three provisional directors who server until the first members meeting.

A copy of the by-laws must also accompany the Articles of Incorporation (sec. 12 (1)). The content of the by-laws is stipulated in the regulations (reg. 32).

Financial and Shares

In the case of a co-operative with member shares, these shares must be at par value (at face value) and not transferable. The par value (the stated face value of each share) must be stated in the Articles of Incorporation and in the by-laws but any number of shares may be issued (reg. 8).

Even if no transfer of shares is possible according to the by-laws, shares are transferable in the case of death of the member to a person stipulated by the member in writing prior to his/her death (sec. 28). Such designations must be registered in the co-operatives register of shares (sec. 24(1.d)).

Members wishing to sell their shares must first offer them to the co-operative that may purchase them at par value (reg.9). If the co-operative does not wish to buy the shares, the member may sell the shares to any person approved by the Board of Directors. The co-op's by-laws may stipulate further procedures relating to the redemption of shares (reg. 9).

Each co-operative must annually set aside, from its net savings, an amount, as stipulated in the by-laws, as a reserve (reg 10). Co-operatives are able to make an interest payment to shareholders at a rate not to exceed the rate stipulated in the by-laws (sec.36 (2.b)). Net income or profit arising from the co-op's business operations must be "allocated, credited or paid" to its members as patronage rebates. Patronage rebates are allocated based on the amount of business conducted by the member with the co-operative (sec. 36(4)). These rebates may be allocated as payments to members (sec. 336(4)), held as loans from members to the co-operative (sec.38) or invested in new shares to be held by the members to whom the dividend is allocated (sec. 37(1)).

Organizational

Members

The first members of a co-operative association are the incorporating members who have signed the articles of incorporation and have purchased the shares, or in the case of co-op limited by membership, paid the fees, as stipulated by the articles (sec. 7, 8). Any new members must purchase the shares or pay the fees, as stipulated by the articles and the co-operatives by-laws, and the board of directors of the co-op (sec. 25) must approve their membership.

Directors

The co-operative's board of directors must consist of at least three co-operative members (sec.33). The maximum number of directors is set by the co-op's by-laws (reg. 32). The Directors must approve members of the co-operative (reg. 27(a)), and new members must have purchased the requisite shares or paid the prescribed fees (sec. 33 (2)). Directors may not be employed by the co-operative for more then thirty days of the year unless approved by the provincial inspector (reg. 27 (b)).

Directors are elected at the co-operative's annual general meetings on a basis of one member one vote regardless of how many shares the individual members has (sec. 2 (d.i); sec. 31 (1)).

Meetings and Procedures

Co-operative associations must hold an annual general meeting. At the meeting the members shall receive and review the financial statements and reports. The directors elect directors to replace those whose term has expired and other matters as consistent with the Act, the regulations and the by-laws. (reg. 16). The members may at a general meeting limit the powers or activities of the directors (reg. 23(a)).

Extraordinary Resolutions

Co-operatives may "make, repeal or amend" its by-laws and articles of incorporation by an extraordinary resolution at a special or annual general meeting (sec. 18; reg. 18). Members must be sent a notice of the meeting and the resolution at least ten days before the meeting and the notice must include the extraordinary resolution (reg. 14; 18). Individual co-ops may require more notice based on their by-laws (sec. 30(3,4)).

Recording, Inspection and Penalties

Each co-operative must maintain a register of members, and if it has share capital it must include the shares held by members, the amount paid and the amount which remains to be paid on shares (sec. 24).

An inspector, as authorized by the Minister responsible, may on his/her initiative and must when requested by fifty members or ten percent of the co-ops membership (whichever is less), "investigate, inspect, inquire and examine into the affairs and business of any association and report thereon to the board or to the members, or to both, whichever in his opinion is appropriate"(sec.5(2.b)). The Inspector may also examine on oath any persons involved in the administration and/or employed by the co-op (sec. 5(3)). Persons failing to comply with the investigations of the Inspector are liable for a maximum penalty of one hundred dollars (sec. 4(4)).

C) Nova Scotia Societies Act: Legal Obligations

"A society may be incorporated under this Act to promote any benevolent, philanthropic, patriotic, religious, charitable, artistic, literary, educational, social, professional, recreational or sporting or any other useful object, but not for the purpose of carrying on any trade, industry or business." (sec. 3(1)). The objectives for which the society is to be incorporated must be stated in the memorandum of association. These objectives can only be changed by a special resolution approved by three quarters of the societies members (sec. 10(f)). The society may borrow funds and use its "funds and property for the attainment of its objects and purposes" and "do all such other acts and things as are incidental or conducive to...the attainment of its objects."(sec. 10)

Incorporation and By-laws

Any five or more persons may submit a memorandum of association to the Registrar, together with a list of first directors and proposed by-laws (sec.5). The by-laws must state the conditions of membership, general meeting procedures, selection and removal of directors and officers, borrowing power, financial accounting, amendment of by-laws, record keeping and contractual arrangements (schedule B). The Registrar must approve the memorandum and the by-laws.

Finance

Societies may not have capital divided into shares. Societies may not divide or distribute its property among its members (sec. 4). At every annual general meeting the members must be presented with financial statements approved by the directors or by the auditor, if one has been appointed (sec. 19).

Members

No member of a society shall be liable for more than the dues or fees payable by him or her to the society (sec. 27). Members of the society shall be the subscribers to the memorandum of association and persons admitted to the society as per the by-laws (sec. 15). "Subject to the by-laws ... every member of a society shall have a vote." (sec. 15)

Members may by a special resolution change the objectives of the society, the by-laws. Such a resolution must be approved in a vote by three quarters of the members after appropriate notice is provided to all member of the resolution (sec.2 & 10(f)).

Directors: "Subject to the by-laws, the members of a society may nominate, elect or appoint any of its members as directors" (sec. 16).

Annual Meetings: Every society must have an annual general meeting (sec. 19).

Recording, Registering and Penalties

A society must maintain a registered office in Nova Scotia (sec. 17). Each society must maintain an up to date register of members (sec.18). The society shall submit to the Register an annual financial statement, a list of directors (sec. 19 & 20). Special resolutions must be filed with the Registrar within fourteen days of being passed (sec. 21).

Penalties, Any society, or director that contravenes the Act is liable to a penalty of not more than $100 (sec. 30).

Northwest Territories

A) Review of the Northwest Territories Business Corporations Act: Legal Obligations

Incorporation under the Business Corporations Act enables a business a series of benefits such as: perpetual existence; the power and capacity of a natural person; the ability to raise capital through issuing shares, while limiting the liability of the investors to the amount they have invested in the company. Each common share entitles its holder to one vote at members meeting, thus the more shares held by a member the greater the number of votes the member is entitled to. Directors are elected by the members and act on their behalf in carrying out the management of the company. Incorporation gives rise to a series of legal obligations to which the following section gives a general overview. Reporting companies (i.e. those who trade shares publicly) are subject to additional regulation.

Articles of Incorporation and By-laws

The Articles of Incorporation establish the terms and conditions of incorporation. The articles form the core of the application for incorporation, submitted to the province's Director. Any changes to the incorporating articles such as creating new class of shares, changing the shares of any class, changing the number of shares of same class, dividing class of shares, altering restrictions on business activities, and changing the name of the corporation, must be approved by special resolution (a resolution requiring approval by at least two thirds of the members) (sec. 176).

Unless the articles or by-laws or unanimous shareholder agreement state otherwise, the directors may, by resolution make, amend or repeal any by-laws that regulate the business or affairs of the corporation (Sec. 103). The directors must submit any amendments to the shareholders at the next shareholder meeting who may, by ordinary resolution confirm, reject, amend, or repeal the by-law (Sec. 103.2).

A shareholder entitled to vote at an annual meeting may make a proposal to make, amend, the articles (Sec.177) and may include in the proposal nominations for the election of directors if the proposal is signed by shareholders holding not less than five percent of the shares in aggregate or in a separate class of shares (Sec. 138.5).

Any amendment which are adopted must be sent to the Registrar (Sec.179) who then issues a certificate of amendment (Sec. 180).

Corporate Finance:

All shares of a corporation must be registered and a central share register must be maintained by the corporation within the province (Sec. 50).

Shares shall be without nominal or par value (Sec. 25).

If a corporation has only one class of shares, unless the articles provide otherwise, each shareholder has the right to vote at any shareholder meeting, to receive any dividends declared by the corporation, and to receive the remaining property of the corporation upon dissolution (Sec. 25.3). Where there are more than one class of shares, the rights, privileges restrictions and conditions of shares of each class must be set out in the articles and those rights contained in Sec. 24.4 must attach to at least one class of shares (Sec. 25.4).

Directors and Shareholders:
There must be more than one director to direct the management of the business and affairs of the corporation (Sec. 102) and no corporation with listed shares can have less than three directors at least two of whom are not officers or employees of the corporation (Sec. 102.3). Directors must be elected at a meeting of shareholders by ordinary resolution and shareholders may by ordinary resolution at a special meeting remove any directors from office (Sec. 107.3/110). Directors are not required to be shareholders in the corporation (Sec. 106.2)and directors may be appointed to any office of the corporation (Sec. 122).

A director or officer who is a party to a material contract or who has a material interest in a material contract with the corporation must disclose in writing to the corporation the nature and extent of his interest and failure to comply may result in the court setting aside the contract (Sec. 121).

While the directors are to act honestly and with good faith and with reasonable prudence in the best interests of the corporation and comply with the articles, regulations and by-laws and any unanimous shareholder agreement, no contract, articles, by-laws or resolutions may relieve a director from the duty to act in accordance with the Act or relieves him from liability for a breach of the Act (Sec. 123).

Directors of a corporation are jointly and severally liable to employees for all debts not exceeding six months payable to each employee for services performed for the corporation (Sec. 120).

Annual Shareholder Meeting:
Subject to the articles, the annual shareholder meeting must take place within the province (Sec. 133) not more than fifteen months after the last annual shareholder meeting. Special meetings can be called at any time (Sec. 134). Shareholders must receive at least twenty-one days notice for shareholder meetings (Sec. 136).

At the annual meeting, the directors must place before the shareholders comparative financial statements, report of the auditor, if any, and any further information respecting the financial position of the corporation as required by the articles, by-laws or any unanimous shareholder agreement (Sec. 157) which have been signed and approved by at least one or more directors (Sec. 160).

The shareholders can, by ordinary resolution, appoint at the annual meeting an auditor to hold office until the close of the next annual meeting (Sec. 164) provided the auditor remains independent (Sec. 163) and the shareholders may remove him/her by ordinary resolution (Sec. 167). Statements that are approved by the director must be sent to the shareholders not less than twenty-one days before the meeting (Sec. 161).

A unanimous shareholder agreement that restricts the powers of the directors to manage the business and affairs of the corporation is valid (Sec. 148).

Recording, Filing, Penalties and Dissolution by the Registrar:
Corporate Records:
Corporations must at all times have a registered office within Northwest Territories (Sec. 21) where the following records must be kept:

- copies of articles and by-laws, all amendments to the articles and by-laws, and copies of any unanimous shareholder agreement

- minutes of meetings and resolutions of shareholders
- copies of all notices including notice of directors (Sec. 107, 114)
- securities register comprising a list of names and addresses of shareholders, number of shares held by each shareholder and the date and particulars of issue and transfer of each share (Sec. 50)

A notice of registered office and change of address and articles of incorporation must be sent to the Registrar (Sec. 19).

Corporations must file with the Director annual return on the prescribed date in the prescribed form (Sec. 270.2).

Shareholders and directors of the corporation may examine the records (Sec. 22) including the shareholder list (Sec. 50) and creditors may only examine copies of the articles, by-laws, unanimous shareholder agreement and any amendments thereto, copies of all notices including notice of directors, and securities register.

The Registrar or any interested person may apply for an order dissolving a corporation by issuing a certificate of dissolution or by Court application if the corporation is in default for two consecutive years with respect holding annual meetings, or where the corporation is not carrying on business for three years (Sec. 215) and the Registrar may dissolve the corporation where it has not ... not sent to the Registrar notices required by the Act (Sec. 214).

Upon the application of a shareholder, the Court may issue an order directing the investigation of the corporation and any order the Court deems appropriate if it appears that the business of the corporation or its affiliates has been carried on fraudulently, in a manner that is oppressive, or unfairly prejudicial to any interested security holder, if the corporation or its affiliates was formed for fraudulent or unlawful purposes or persons connected to formation of its business affairs have acted fraudulently or dishonestly (Sec. 232).

Contravention any person of any provisions of the Act or regulation for which no specific punishment is provided is guilty of an offence and is liable on summary conviction to a fine not exceeding $10,000 if a body corporate and $5,000 if an individual (Sec. 253).

B) Review of the North West Territories Co-operative Associations Act: *Legal Obligation*
Five or more people may form a co-operative, with or without share capital, under the Act (sec.1) by applying to the Supervisor for the NWT.

Memorandum of Association and By-laws (Incorporation Documents)
A certificate of incorporation will be provided based on the submission of a memorandum of association and by-laws in compliance with the Act.

The Memorandum must state (sec. 3(2)):
- the name of the co-operative
- to objectives of the co-operative
- the location of the registered office
- if there is share capital and the share structure
- "if there is no share capital, the terms of membership must be provided.

The memorandum may be changed by an extraordinary resolution (sec. 23). An extraordinary resolution must be passed by three quarters of the members at a general meeting call for the

purpose of changing the memorandum (sec. 1). The NWT Supervisor must approve the change before it comes into effect (sec. 23).

By-laws

The standard by-laws (as provided by the Supervisor) are the by-laws of the co-operative until, the co-operative amends the by-laws at the annual general meeting, or at a general meeting called for the purpose of changing the by-laws (sec. 21). The co-operative may change the by-laws as it sees appropriate but the new by-laws are not in effect until the NWT Supervisor (sec. 21) approves them.

Membership and Meetings

Membership in the co-operative "is governed by the by-laws" and a member must be approved by the directors of the co-operative (sec. 10, 11). Members may withdraw from the co-operative, but a notice of up to six months may be required and the request for withdrawal may be rejected if repayment of shares would cause a substantial decline in working capital (more than ten percent) (sec. 13 (2)). Members that fail to comply with the "Act or the by-laws may be expelled by the (co-operative) after a hearing and a two thirds vote of the members present at a special meeting called to consider the expulsion" (sec. 12).

General Meetings

The co-operative must hold annual general meetings (sec 20). Other general meetings (special general meetings) "may be called as specified by the by-laws." Each member shall have one vote at the general meetings. The standard by-laws state that a notice of a general meeting must be sent to members at least ten days before the meeting (standard by-laws sec. 4).

If an extraordinary resolution is to be passed, a notice of the meeting, specifying the resolution, must be present to members thirty day before the general meeting.

The directors may call a special meeting by sending notice of the meeting to all members eligible to vote at the meeting, stating the business to be discussed, to all members at least ten days in advance of the meeting. Only the business specified in the notice may be transacted a the special meeting. The directors must call members meeting when requested to do so by ten percent of the members (standard by-laws sec. 5).

Directors

The directors direct and supervise the affairs and business of the co-operative, and must meet at least once every three months (sec. 19). A co-operative "with less than ten members shall have three directors" and one with ten or more members shall have at least five directors (sec. 17).

Directors must be members of the co-operative and are elected by the members in the manner specified by the by-laws. A co-operative may stipulate that up to twenty-five percent of the directors be "elected by members holding preferred shares." (sec. 18 (4.1))

Financial

Co-operatives with shares can have ordinary shares and preferred shares as specified in the memorandum of association, but the no preferred share will carry the right to vote. Shares are not transferable unless in the case of death or if stipulated in the by-laws (sec. 9). Members are only liable for the unpaid portion of their shares or membership dues (sec. 14).

The by-laws of the co-operative may allow the co-operative to borrow from its members for periods of longer than ninety days (sec. 26).

Allocation to members and reserves
At least twenty percent of the amount available for distribution to members at the fiscal year end must be designated as a reserve for contingencies (sec. 30). Any surplus after allocations for reserves and payments of interest on share capital is allocated to members as patronage refunds (by-laws 31). The amount of the patronage refund a member receives is based on the proportion of the co-operative's total business conducted by the member.

Records, Reporting and Penalties
The co-operative must keep at its registered office a register of members (sec. 15), stating:
- the name address and occupation of each member
- the date a person became a member
- the date a person ceased to be a member
- the number of shares held by each member
- the amount paid for each share

The co-operative must keep copies of the memorandum of association, the by-laws, and any extraordinary resolutions filed with the Supervisor.

The co-operative must file any amendments to the co-operative's by-laws and extraordinary resolutions. The co-operative must provide the Supervisor with an annual return in the form prescribed by the Supervisor, "including the details required by the Supervisor, and a copy of the financial statement for the preceding fiscal year" (sec. 31 (3)).

Penalties
Every co-operative that acts in contravention of the Act is liable to a fine of not exceeding $1,000. An individual that contravenes the Act is liable for a maximum fine of $500 and imprisonment (sec. 56).

C) Review of the Northwest Territories Societies Act: Legal Obligations
Five or more people may incorporate as a society in the Northwest Territories (NWT) to carry on any "benevolent, philanthropic, charitable, religious, provident, scientific, artistic, literary, social, educational, sporting or other useful purpose other than the carrying on of a trade or business" (sec. 2).

Incorporation
The application to the Registrar for incorporation as a society must be on the form prescribed by the Registrar include:
- the intended name of for the society
- and the objective(s)/purpose of the society, and
- by-laws for the society (sec. 2).

The name and/or purpose may be changed by extraordinary resolution. The resolution must be approved by the Registrar for the change to come into effect (sec. 23). An extraordinary resolution is a resolution passed by a majority of three quarters of the members of the society, at a general meeting for which proper notice, as per the by-laws, has been provided.
The notice must state the "intention to propose the resolution as an extraordinary resolution." (sec. 1)

By-laws

The by-laws must include provisions for

"(a) the terms of admission of members and their rights and obligations;
(b) the conditions of withdrawal of members and the manner, if any, in which a member may be expelled;
(c) the mode and time of calling general and special meetings of the society, the number of members constituting a quorum and the rights of voting at such meetings;
(d) the appointment and removal of directors and other officers and their duties, powers and remuneration;
(e) the exercise of borrowing powers;" (sec. 5).

Crucial to receiving incorporation as a society is the Registrars assessment as to whether the purposes and/or objectives of the society fit within the areas covered in the Act, and whether the by-laws are compatible with the Act. The Registrar is the sole judge of this (sec. 3). In corporation does not come into effect until the application is approved by the Registrar (sec. 4).

The by-laws may only be changed at by an extraordinary resolution at a general membership meeting (sec. 6). An extraordinary resolution requires approval by at least three quarters of the members at a membership meeting for which proper notice, stating the proposed resolution, has been provided to the membership (sec. 1). Any change must be approved by the Minister before it comes into effect (sec. 6).

An incorporated society may acquire property by purchase, gift or otherwise, and; "sell, exchange, mortgage, lease, license, improve and develop property." "The funds and property of a society must be used and dealt with for its objects only and in accordance with its by-laws." (sec. 9)

Finance

The society may only borrow money if allowed by the society's by-laws (sec. 11). A society may not, according to section 12,

"(a) have a capital divided into shares;
(b) declare any dividend; or
(c) distribute its property among its members."

Membership and Meetings

A member is not liable for any debts and/or liabilities of the society (sec. 13).

Meetings

Societies must hold an annual general meeting at which the society's financial statements, for the past fiscal year-end must be presented (sec. 17).

Reporting/Filing and Penalties

The society must file its financial statements within fourteen days of the annual general meeting. The society must also file an updated list of directors to accompany the financial statements (sec. 18). Copies of extraordinary resolutions must be filed with the Registrar (sec. 20).

Penalties

Every society that contravenes the Act is liable, on conviction, to a maximum fine of $100 (sec. 31).

Nunavut Territory

A) Review of the Nunavut Territory Business Corporations Act: Legal Obligations

Incorporation under the Business Corporations Act enables a business a series of benefits such as: perpetual existence; the power and capacity of a natural person; the ability to raise capital through issuing shares, while limiting the liability of the investors to the amount they have invested in the company. Each common share entitles its holder to one vote at members meeting, thus the more shares held by a member the greater the number of votes the member is entitled to. Directors are elected by the members and act on their behalf in carrying out the management of the company. Incorporation gives rise to a series of legal obligations to which the following section gives a general overview. Reporting companies (i.e. those who trade shares publicly) are subject to additional regulation.

Articles of Incorporation and By-laws

The Articles of Incorporation establish the terms and conditions of incorporation. The articles form the core of the application for incorporation, submitted to the province's Director. Any changes to the incorporating articles such as creating new class of shares, changing the shares of any class, changing the number of shares of same class, dividing class of shares, altering restrictions on business activities, and changing the name of the corporation, must be approved by special resolution (a resolution requiring approval by at least two thirds of the members) (sec. 176).

Unless the articles or by-laws or unanimous shareholder agreement state otherwise, the directors may, by resolution make, amend or repeal any by-laws that regulate the business or affairs of the corporation (Sec. 103). The directors must submit any amendments to the shareholders at the next shareholder meeting who may, by ordinary resolution confirm, reject, amend, or repeal the by-law (Sec. 103.2).

A shareholder entitled to vote at an annual meeting may make a proposal to make or amend, the articles (Sec.177) and may include in the proposal, nominations for the election of directors if the proposal is signed by shareholders holding not less than five percent of the shares in aggregate or in a separate class of shares (Sec. 138.5).

Any amendments which are adopted must be sent to the Registrar (Sec.179) who then issues a certificate of amendment (Sec. 180).

Corporate Finance:

All shares of a corporation must be registered and a central share register must be maintained by the corporation within the province (Sec. 50).

Shares shall be without nominal or par value (Sec. 25).

If a corporation has only one class of shares, unless the articles provide otherwise, each shareholder has the right to vote at any shareholder meeting, to receive any dividends declared by the corporation, and to receive the remaining property of the corporation upon dissolution (Sec. 25.3). Where there are more than one class of shares, the rights, privileges restrictions and conditions of shares of each class must be set out in the articles and those rights contained in Sec. 24.4 must attach to at least one class of shares (Sec. 25.4).

Directors and Shareholders:
There must be more than one director to direct the management of the business and affairs of the corporation (Sec. 102) and no corporation with listed shares can have less than three directors at least two of whom are not officers or employees of the corporation (Sec. 102.3). Directors must be elected at a meeting of shareholders by ordinary resolution and shareholders may be ordinary resolution at a special meeting remove any directors from office (Sec. 107.3/110). Directors are not required to be shareholders in the corporation (Sec. 106.2) and directors may be appointed to any office of the corporation (Sec. 122).

A director or officer who is a party to a material contract or who has a material interest in a material contract with the corporation must disclose in writing to the corporation the nature and extent of his interest and failure to comply may result in the court setting aside the contract (Sec. 121).

While the directors are to act honestly and with good faith and with reasonable prudence in the best interests of the corporation and comply with the articles, regulations and by-laws and any unanimous shareholder agreement, no contract, articles, by-laws or resolutions may relieve a director from the duty to act in accordance with the Act or relieves him from liability for a breach of the Act (Sec. 123).

Directors of a corporation are jointly and severally liable to employees for all debts not exceeding six months payable to each employee for services performed for the corporation (Sec. 120).

Annual Shareholder Meeting:
Subject to the articles, the annual shareholder meeting must take place within the province (Sec. 133) not more than fifteen months after the last annual shareholder meeting. Special meetings can be called at any time (Sec. 134). Shareholders must receive at least twenty-one days notice for shareholder meetings (Sec. 136).

At the annual meeting, the directors must place before the shareholders comparative financial statements, report of the auditor, if any, and any further information respecting the financial position of the corporation as required by the articles, by-laws or any unanimous shareholder agreement (Sec. 157) which have been signed and approved by at least one or more directors (Sec. 160).

The shareholders can, by ordinary resolution, appoint at the annual meeting an auditor to hold office until the close of the next annual meeting (Sec. 164) provided the auditor remains independent (Sec. 163) and the shareholders may remove him by ordinary resolution (Sec. 167). Statements that are approved by the director must be sent to the shareholders not less than twenty-one days before the meeting (Sec. 161).

A unanimous shareholder agreement that restricts the powers of the directors to manage the business and affairs of the corporation is valid (Sec. 148).

Recording, Filing, Penalties and Dissolution by the Registrar:
Corporate Records:
Corporations must at all times have a registered office within Nunavut Territory (Sec. 21) where the following records must be kept:

- copies of articles and by-laws, all amendments to the articles and by-laws, and copies of any unanimous shareholder agreement,

- minutes of meetings and resolutions of shareholders
- copies of all notices including notice of directors (Sec. 107, 114),
- securities register comprising a list of names and addresses of shareholders, number of shares held by each shareholder and the date and particulars of issue and transfer of each share (Sec. 50).

A notice of registered office and change of address and articles of incorporation must be sent do the Registrar (Sec. 19).

Corporations must file with the Director an annual return on the prescribed date in the prescribed form (Sec. 270.2).

Shareholders and directors of the corporation may examine the records (Sec. 22) including the shareholder list (Sec. 50), and creditors may only examine copies of the articles, by-laws, unanimous shareholder agreement and any amendments thereto, copes of all notices including notice of directors, and securities register.

The Registrar or any interested person may apply for an order dissolving a corporation by issuing a certificate of dissolution or by Court application if the corporation is in default for two consecutive years with respect holding annual meetings, or where the corporation is not carrying on business for three years (Sec. 215) and the Registrar may dissolve the corporation where it has not ... not sent notices required by the Act to the Registrar (Sec. 214).

Upon the application of a shareholder, the Court may issue an order directing the investigation of the corporation, and any order the Court deems appropriate if it appears that the business of the corporation or its affiliates has been carried on fraudulently, in a manner that is oppressive, or unfairly prejudicial to any interested security holder, if the corporation or its affiliates was formed for fraudulent or unlawful purposes, or persons connected to formation of its business affairs have acted fraudulently or dishonestly (Sec. 232).

Contravention by any person of any provisions of the Act or regulation for which no specific punishment is provided is guilty of an offence and is liable on summary conviction to a fine not exceeding $10,000 if a body corporate and $5,000 if an individual (Sec. 253).

B) Review of the Nunavut Co-operative Associations Act: Legal Obligations

Five or more people may form a co-operative, with or without share capital, under the Act (sec.1) by applying to the Supervisor for Nunavut.

Memorandum of Association and By-laws (Incorporation Documents)

A certificate of incorporation will be provided based on the submission of a memorandum of association and by-laws in compliance with the Act.

The Memorandum must state (sec. 3(2)):

- the name of the co-operative
- to objectives of the co-operative
- the location of the registered office
- if there is share capital and the share structure
- "if there is no share capital, the terms of membership must be provided."

The memorandum may be changed by an extraordinary resolution (sec. 23). An extraordinary resolution must be passed by three quarters of the members at a general meeting call for the purpose of changing the memorandum (sec. 1). The Supervisor must approve the change before it comes into effect (sec. 23).

By-laws

The standard by-laws (as provided by the Supervisor) are the by-laws of the co-operative until, the co-operative amends the by-laws at the annual general meeting, or at a general meeting called for the purpose of changing the by-laws (sec. 21). The co-operative may change the by-laws as it sees appropriate but the new by-laws are not in effect until the Supervisor (sec. 21) approves them.

Membership and Meetings

Membership in the co-operative "is governed by the by-laws" and a member must be approved by the directors of the co-operative (sec. 10, 11). Members may withdraw from the co-operative, but a notice of up to six months may be required and the request for withdrawal may be rejected if repayment of shares would cause a substantial decline in working capital (more than ten percent) (sec. 13 (2)). Members that fail to comply with the "Act or the by-laws may be expelled by the (co-operative) after a hearing and a two thirds vote of the members present at a special meeting called to consider the expulsion" (sec. 12).

General Meetings

The co-operative must hold annual general meetings (sec 20). Other general meetings (special general meetings) "may be called as specified by the by-laws." Each member shall have one vote at the general meetings. The standard by-laws state that a notice of a general meeting must be sent to members at least ten days before the meeting (standard by-laws sec. 4).

If an extraordinary resolution is to be passed, a notice of the meeting, specifying the resolution, must be present to members thirty days before the general meeting.

The directors may call a special meeting by sending notice of the meeting to all members eligible to vote at the meeting, stating the business to be discussed, to all members at least ten days in advance of the meeting. Only the business specified in the notice may be transacted at the special meeting. The directors must call a member meeting when requested to do so by ten percent of the members (standard by-laws sec. 5).

Directors

The directors direct and supervise the affairs and business of the co-operative, and must meet at least once every three months (sec. 19). A co-operative "with less than ten members shall have three directors" and one with ten or more members shall have at least five directors (sec. 17).

Directors must be members of the co-operative and are elected by the members in the manner specified by the by-laws. A co-operative may stipulate that up to twenty-five percent of the directors be "elected by members holding preferred shares" (sec. 18 (4.1)).

Financial

Co-operatives with shares can have ordinary shares and preferred shares as specified in the memorandum of association, but the no preferred share will carry the right to vote. Shares are not transferable unless in the case of death or if stipulated in the by-laws (sec. 9). Members are only liable for the unpaid portion of their shares or membership dues (sec. 14).

The by-laws of the co-operative may allow the co-operative to borrow from its members for periods of longer than ninety days (sec. 26).

Allocation to members and reserves

At least twenty percent of the amount available for distribution to members at the fiscal year end must be designated as a reserve for contingencies (sec. 30). Any surplus after allocations for reserves and payments of interest on share capital is allocated to members as patronage refunds (by-laws 31). The amount of the patronage refund a member receives is based on the proportion of the co-operative's total business conducted by the member.

Records, Reporting and Penalties

The co-operative must keep a registrar of members at its registered office (sec. 15), stating:

- the name, address and occupation of each member
- the date a person became a member
- the date a person ceased to be a member
- the number of shares held by each member
- the amount paid for each share

The co-operative must keep copies of the memorandum of association, the by-laws, and any extraordinary resolutions filed with the Supervisor.

The Co-operative must file any amendments to the co-operative's by-laws and extraordinary resolutions. The co-operative must provide the Supervisor with an annual return in the form prescribed by the Supervisor, "including the details required by the Supervisor, and a copy of the financial statement for the preceding fiscal year." (sec. 31 (3))

Penalties

Every co-operative that acts in contravention of the Act is liable to a fine of not exceeding $1,000. An individual that contravenes the Act is liable for a maximum fine of $500 and imprisonment (sec. 56).

C. Review of the Nunavut Territory Societies Act: Legal Obligations

Five or more people may incorporate as a society in the Nunavut Territory (NU) to carry on any "benevolent, philanthropic, charitable, religious, provident, scientific, artistic, literary, social, educational, sporting or other useful purpose other than the carrying on of a trade or business" (sec. 2).

Incorporation

The application to the Registrar for incorporation as a society must be on the form prescribed by the Registrar include:

- the intended name of for the society
- and the objective(s)/purpose of the society, and
- by-laws for the society (sec. 2).

The name and/or purpose may be changed by extraordinary resolution. The resolution must be approved by the Registrar for the change to come into effect (sec. 23). An extraordinary resolution is a resolution passed by a majority of three quarters of the members of the society, at a general meeting for which proper notice, as per the by-laws, has been provided. The notice must state the "intention to propose the resolution as an extraordinary resolution" (sec. 1).

By-laws

The by-laws must include provisions for

"(a) the terms of admission of members and their rights and obligations;
(b) the conditions of withdrawal of members and the manner, if any, in which a member may be expelled;
(c) the mode and time of calling general and special meetings of the society, the number of members constituting a quorum and the rights of voting at such meetings;
(d) the appointment and removal of directors and other officers and their duties, powers and remuneration;
(e) the exercise of borrowing powers;" (sec. 5).

Crucial to receiving incorporation as a society is the Supervisor's assessment as to whether the purposes and/or objectives of the society fit within the areas covered in the Act, and whether the by-laws are compatible with the Act. The Supervisor is the sole judge of this (sec. 3). In corporation does not come into effect until the application is approved by the Supervisor (sec. 4).

The by-laws may only be changed at by an extraordinary resolution at a general membership meeting (sec. 6). An extraordinary resolution requires approval by at least three quarters of the members at a membership meeting for which proper notice, stating the proposed resolution, has been provided to the membership (sec. 1). The Minister must approve any change before it comes into effect (sec. 6).

An incorporated society may acquire property by purchase, gift or otherwise, and: "sell, exchange, mortgage, lease, license, improve and develop property." "The funds and property of a society must be used and dealt with for its objects only and in accordance with its by-laws" (sec. 9).

Finance

The society may only borrow money if allowed by the society's by-laws (sec. 11).
A society may not, according to section 12,
"(a) have a capital divided into shares;
(b) declare any dividend; or
(c) distribute its property among its members."

Membership and Meetings

A member is not liable for any debts and/or liabilities of the society (sec. 13).

Meetings

Societies must hold an annual general meeting at which the society's financial statements, for the past fiscal year-end must be presented (sec. 17).

Reporting/Filing and Penalties

The society must file its financial statements within fourteen days of the annual general meeting. The society must also file an updated list of directors to accompany the financial statements (sec. 18). Copies of extraordinary resolutions must be filed with the Registrar (sec. 20).

Penalties

Every society that contravenes the Act is liable, on conviction, to a maximum fine of $100 (sec. 31).

Ontario

A) Ontario Day Nurseries Act Regulations: References to Form of Incorporation

To qualify for funding and grants, as an "approved corporation", the license holder must be a corporation without share capital or a co-operative whose articles of incorporation state that that co-operative does not operate with objective of personal gain for its members (regs. sec.2). If the applicant for a license is a corporation without share capital " the following matters shall be embodied in the corporation's letters patent" (articles of incorporation):

"1. The corporation shall have at least five directors.

2. No employee of the corporation may be a director of it.

3. The corporation shall not purchase goods or services from any director, officer or person related to a director or officer of the corporation unless there is only one available source of the goods or services within a reasonable distance of the day nursery.

4. The corporation shall not sell goods or services, other than child care services, to any director, officer or person related to a director or officer of the corporation.

5. The corporation shall not lend money to or borrow money from any director, officer or person related to a director or officer of the corporation.

6. The corporation shall not rent property to or from any director, officer or person related to a director or officer of the corporation.

7. The corporation shall not engage in any other transaction which may directly or indirectly confer a financial benefit on one of its directors.

8. The directors of the corporation shall serve as directors without remuneration but may be reimbursed for reasonable expenses incurred in the performance of their duties.

9. No director of the corporation shall directly or indirectly receive any form of money or money's worth as a result of his or her position as director.

10. Upon dissolution of the corporation and after payment of all of its debts and liabilities, the remaining property of the corporation shall be distributed or disposed of only to charitable or non-profit organizations which provide child care, which are beneficial to the community and which operate solely in Ontario" (regs. sec. 2(2)). .

B) Review of the Ontario Business Corporations Act: Legal Obligations

Incorporation under the Business Corporations Act enables a business a series of benefits such as: perpetual existence; the power and capacity of a natural person; the ability to raise capital through issuing shares, while limiting the liability of the investors to the amount they have invested in the company. Each common share entitles its holder to one vote at members meeting, thus the more shares held by a member the greater the number of votes the member is entitled to. Directors are elected by the members and act on their behalf in carrying out the management of the company. Incorporation gives rise to a series of legal obligations to which the following section gives a general overview. Reporting companies (i.e. those who trade shares publicly) are subject to additional regulation.

Articles of Incorporation and By-laws

The Articles of Incorporation establish the terms and conditions of incorporation. The articles form the core of the application for incorporation, submitted to the province's Director. Any fundamental amendments to the corporation such as changes to business activity/name of the corporation, classes, designation, number, or series of shares (Sec. 168) must be effected by special resolution (Sec 170.4) and sent to the Director (171) who will then issue a certificate of amendment (Sec. 172). A special resolution is a resolution that must be approved by at least a two thirds majority of the shareholders.

Unless the articles, the by-laws or unanimous shareholder agreement provides otherwise, the directors may, by resolution, make, amend or repeal any by-laws that regulate the business or affairs of the corporation (Sec. 116). The directors must submit any such changes to the shareholders at the next shareholder meeting that may then confirm, reject, amend, or repeal the by-law (Sec. 116.2) subject to a special resolution (Sec. 170.4).

A shareholder entitled to vote at a meeting of shareholders may submit to the corporation a proposal to make, amend or repeal a by-law (Sec. 99) and may include in the proposal nominations for the election of directors if the proposal is signed by a shareholder holding not less than five percent of shares in aggregate or in a separate class of shares (Sec. 99.4)

Directors or shareholders entitled to vote an annual meeting may make a proposal to amend the articles.

Corporate Finance:

Shares of a corporation shall be registered without nominal or par value (Sec. 22) and a securities register must be maintained within the province (Sec. 141).

If a corporation has only one class of shares the rights of all shareholders must be equal in all respects (Sec. 22.6) and including the right to vote at all shareholder meetings and the right to receive any remaining property of the corporation upon dissolution (Sec. 22). The articles of incorporation may provide for more than one class of shares (Sec. 22.4) and the rights, privileges, restrictions, and conditions of shares of each class shall be set out in the articles and the rights contained in Sec. 22.4 must attach to at least one class of shares but both rights need not be attached to any one class.

Directors and Shareholders:

The directors, the number of which is to be designated in the by-laws (Sec. 168.m) manage and supervise the affairs of the corporation (Sec. 115) and no corporation with listed shares can have less than three directors (Sec. 115.6) and the majority of directors must be Canadian residents (Sec. 118.3). The directors may be appointed to any office of the corporation (Sec. 133.b) and are not required to hold shares of the corporation (Sec. 118.2). Shareholders of a corporation may be ordinary resolution at an annual or special meeting remove any directors.

A director who is a material party to a material contract or who has a material interest in a material contract with the corporation must disclose in writing to the corporation the nature and extent of his interests in and failure to comply may result in the Court setting aside the contract (Sec. 132).

When the corporation is in liquidation and in bankruptcy proceedings or where the directors are sued, the directors are jointly and individually liable to employees for all debts not

exceeding six months wages payable to each employee for services performed for the corporation (Sec. 131).

Annual Shareholder Meeting:
Shareholders must appoint an auditor at each annual meeting to hold office until the close of next annual meeting provided the auditor remains independent (Sec. 152)

A shareholder meeting must be called by the directors to be held no later than eighteen months after the date of incorporation and not later than 15 months after the preceding annual meeting and special meetings can be called at any time (Sec. 94). Shareholders must receive at least twenty-one days notice for shareholder meetings (Sec. 96).

At the annual meeting, the directors must place before the shareholders financial statements prepared by an auditor appointed at the previous annual meeting (Sec. 149, 153). The statements must include the report of the auditor if any and further information respecting the financial position of the corporation as required by the articles, by-laws or unanimous shareholder agreement (Sec. 154). Statements must be approved by the directors (Sec. 159) and must be sent to the shareholders at least twenty-one days before the meeting (Sec. 154.3).

A unanimous shareholders agreement that restricts the powers of the directors to manage the business and affairs of the corporation is valid (Sec. 108).

Records, Filing, Penalties and Dissolution by Registrar:
Corporate Records:
A corporation must at all times have a registered office in Ontario (Sec. 14) and must prepare and maintain at its registered office or at such other place in Ontario:
- copies of articles, by-laws and all amendments thereto and copy of any unanimous shareholder agreements
- minutes and meetings and resolutions of shareholders
- register of directors
- securities register with up-to-date list of shareholders within last 6 years
- adequate accounting records
- all other records required by law

Directors, shareholders and creditors of a corporation are entitled access to the records and securities register (Sec. 145, 146).

Contravention of the Business Incorporation Act can result in fines of up to $2000 and /or one year imprisonment (Sec. 258).

Upon an application by a shareholder, the Court may issue an order directing an investigation into the corporation and any of its affiliates and the Court can make an order it deems appropriate if it appears that the business of the corporation or any of its affiliates has been carried on fraudulently, in a manner that is oppressive, or unfairly prejudicial to any interested security holder (Sec. 161).

The shareholders of a corporation may by special resolution require the corporation to be wound up voluntarily (Sec. 193).

C) Review of the Ontario Co-operative Corporations Act: Legal Obligations

Any five or more persons may apply to the Minister for incorporation as a co-operative (sec. 5). Incorporation provides the co-operative with "the capacity and the rights, powers and privileges of a natural person" (sec. 15). A co-operative may under the Act be with, or without share capital. The co-operative must be "organized, operated and administered" on a co-operative basis. Section 1 of the Act states that a co-operative basis means to follow the following principles and methods:

"(a) each member ... has only one vote,

(b) no member or delegate may vote by proxy,

(c) interest on loan capital and dividends on share capital are limited to a percentage fixed by this Act or the articles of incorporation, and

(d) the enterprise of the corporation is operated as nearly as possible at cost after providing for reasonable reserves and the payment or crediting of interest on loan capital or dividends on share capital; and any surplus funds arising from the business of the organization, ... unless used to maintain or improve services of the organization for its members or donated for community welfare or the propagation of co-operative principles, are distributed in whole or in part among the members in proportion to the volume of business they have done with or through the organization" (Sec. 1).

A failure to operate on a co-operative basis will result in a loss of incorporation as a co-operative (sec. 143).

Articles of Incorporation

The application to the Minister for incorporation includes the articles of incorporation. The articles provide the following:

"1. The name of the co-operative to be incorporated.

2. All restrictions on the business that the co-operative may carry on or on the powers that the co-operative may exercise.

3. The place in Ontario where the head office of the co-operative is to be located.

4. The number of directors or the minimum and maximum numbers of directors of the co-operative and the names in full and the residence addresses" (of the directors) (sec. 5(2)).

Where there are shares, the share capital structure of the co-operative, along with the terms and conditions of the shares.

"Where there is to be no share capital,

(i) the amount of the membership fee,

(ii) the restrictions to be placed on the transfer of member loans,

(iii) the classes of membership, if any, setting forth the designation of and the terms and conditions attaching to each class of membership, and any other matter required by this Act or the regulations to be set out in the articles"(sec. 5(3)).

The articles can also set out any other items that can be put forth in the by-laws as per the Act (sec. 5(4)). The co-operative comes into effect once the articles have been reviewed and approved by the Minister (sec. 6).

The articles of incorporation can only be changed by a special resolution, that is a resolution passed by the directors of the co-operative and confirmed by a vote of two-thirds of the

members at a general meeting (sec. 150(2), 1). The Minister (sec. 154) must approve any changes to the articles.

By-laws

The directors may make by-laws that "regulate the business and the affairs of the co-operative" (sec. 21) but no "by-law is effective until it is,

(a) passed by the directors of a co-operative; and

(b) confirmed, with or without variation, by at least two-thirds of the votes cast at a general meeting of the members of the co-operative duly called for that purpose, or such greater proportion of the votes cast as the articles provide" (sec. 23).

Membership and Meetings

No person may become a member of co-operative until approved for membership by the directors (sec. 60). Any transfers of memberships must also be approved by the directors (sec. 61, 62, 40). A member may withdraw from the co-operative by providing the co-operative with six months notice. The co-operative shall within six months purchase the member's shares at par value (i.e. face value) along with other debts or loans owed to the member by the co-operative (sec. 64). Where the directors deem that to purchase the members share would "not be in the best interests of the co-operative," they may extend the payments owed to the member over a five year period, and "pay in each year not less than twenty percent of the (total) amount to be repaid" to the member (sec. 64(6)).

Expulsion

Membership in the co-operative may be ended by a resolution passed by the directors, at a meeting called to consider the matter, and for which ten days notice, and the opportunity to present her/his case, has been provided to the member being expelled (sec. 66). The member being expelled by the directors may appeal the decision to the membership at the next annual or general meeting of members. The members by a "majority vote may confirm, vary or set aside the resolution" to expel the member (sec. 66(4)). The co-operative must purchase the expelled members shares and pay off any debt owed to the member within one year (sec. 66(6)).

Meetings

The co-operative must hold an annual general meeting at which director's reports are provided and financial statements and "any members shall have an opportunity to raise any matter relevant to the affairs and business of the co-operative" (sec. 77). The directors may at any time call a general meeting provided that at least ten days notice has been provided to the members stating the business to be conducted at the meeting (sec. 78).

When in receipt of a written request, signed by at least by five percent of the members of the co-operative, the directors must call a general meeting, to address the matters described in the request (sec. 70). If the directors do not call the meeting within thirty days, the members requesting the meeting may call a meeting (sec. 79).

Request for a Directors Meeting to Change the By-laws

When requested by at least ten percent of the members the directors must hold a director meeting to deal with the specific resolution or by-law stipulated by the member's request. If the directors do not hold the meeting, pass the resolution and call a general membership

meeting to confirm their decision, then the members may call a general meeting to pass the resolution or by-law change (sec. 70).

When requested by five percent of the members, the directors must provide the membership notice of a specific resolution that will be presented to the next membership meeting for approval, along with supporting documents (sec. 71).

The co-operative must provide the members with at least ten days notice of general meetings and not more then a fifty day notice. All matters presented at the members meeting shall be determined by a majority of the members votes cast. Each member has one vote regardless of the number of shares held except the chair of the meeting who has a second and tie breaking vote in the case of a tie in the voting (sec. 76, 75).

Directors

Every co-operative must have a board of directors (sec. 85) that "shall manage or supervise the management of the affairs and business of the co-operative" (sec. 96). The co-operative shall have at least three directors (sec. 85). Directors must be members of the co-operative (sec. 87) and elected by the members at a general meeting (sec. 90).

Directors are jointly liable to their employees for not more than six months wages (sec. 103).

Directors may be removed by a resolution passed by a majority of members attending a general meeting called for the purpose of removing the director (sec. 104). Directors may receive remuneration if allowed by the by-laws (sec. 22).

Finance

Shares

Where a co-operative has share capital all the shares must be of par value i.e. each share must state the face value or dollar value of the share (sec. 25). The co-operative can have more than one class of shares, one of which must be designated as co-operative membership shares (sec. 26). Where the co-operative has only one class of shares that class of shares must be membership shares. Any preference share issued by the co-operative must state the terms and conditions associated with the share (sec. 27). Preference shares do not carry the right to vote except under the limited conditions allowed by the Act and confirmed in the by-laws, nor do they carry any rights to the co-operative's property at dissolution (sec. 27). Preference shares provide the holder with a specific rate of interest.

The co-operative may purchase any of its shares "at a price not exceeding the par value of the shares" plus a premium (using a formula set out in the articles of incorporation) and any unpaid dividends (sec. 30).

Membership shares are only transferable if authorized by the directors of the co-operative and the person receiving the shares (transferee) is "admitted to membership in the co-operative as required by its articles ad by-laws" (sec. 40, 42).

Members Loans

A co-operative without share capital may borrow funds from its members up to the rate of interest stipulated in the by-laws (sec. 49).

Distribution of Surplus

After allocations to reserves and dividends, if stipulated by the by-laws, any net surplus

arising from the operations must be "allocated, credited or paid to the members in proportion to the business done by each member with or through the co-operative" (sec. 55). These patronage returns may be used by the co-operative to purchase additional shares in the co-operative on behalf of the members, and, if allowed by the by-laws, the co-operative may require the members to lend the co-operative all, or part, of the patronage dividend, based on terms set by the by-laws (sec. 56(4)).

Financial Statements

At each annual general meeting, the directors must present the members at each annual general meeting with financial statements for the just completed fiscal year, and an auditors report where necessary as stipulated by the Act (sec. 128).

Recording, Reporting and Penalties

According to section 114 of the Act a co-operative's office must include the following records:

"1. A copy of the articles of the co-operative.
2. All by-laws and resolutions include special resolutions, of the co-operative.
3. A register of members and security holders in which is set out the names of:
   i. in a co-operative with share capital, all persons who are or have been within ten years registered as holders of shares in the co-operative.
   ii. in a co-operative without share capital, all persons who are or have been within ten years registered as members of the co-operative,
4. A register of directors in which are set out the names and residence addresses while directors,
5. Proper accounting records in which are set out all financial and other transactions of the co-operative including:
   The minutes of all proceedings at meetings of members, directors and any executive committee." (sec. 114)

The register of members must be accessible to the members of the co-operative.

Regular Reporting

The co-operative must provide the Minister with financial statements each year after the annual general meeting (sec. 141).

Penalties

Where the Minister finds that the co-operative is not operating on a co-operative basis, the Minister may change the incorporation to incorporation under the Corporations Act or the Business Corporations Act, thereby revoking the status as a co-operative (sec. 143).

Every person guilty of contravening the Act is liable for a fine of up to $5,000. A guilty corporation is liable for a maximum fine of $100,000 for contravention of the Act. (sec. 176).

D) Review of the Ontario Corporations Act (non-profits): Legal Obligations

Societies are dealt under Part III of the *Corporations Act*. Under Part III a corporation without share capital may be incorporated as long as its objects are within the jurisdiction of the province of Ontario (s.118). Associations incorporated under this part "shall not be carried on for gain of its members and any profits or accretions must be used in promoting its objects (s.126). Upon corporation the association holds wide legal powers to hold property and conduct business affairs unless limited by the letters patent (s.23(1)(2)).

Incorporation and By-laws

Where the objects of the corporation are in whole or in part of a social nature the number of applicants for incorporation must not be fewer than ten and they must be eighteen years of age. (s.4(1)(2)).The application is made to the Lt. Governor and must include (1) names, address and employment of each applicant; (2) name of corporation; (3) objects of incorporation; (4) location of the head office; (5) names of the first directors; (6) anything else to be embodied in the letters patent. In order to extend, limit or vary the objects of incorporation or the letters patent there must be an application to the Lt. Governor which is authorized by a special resolution of two thirds of members at a General Meeting or by consent in writing of all members. Directors may pass by-laws that are not contrary to law, the letters patent or any supplemental letters patent. Such by-laws may regulate: (a) all aspects of membership; (b) fees/dues; (c) qualifications/remuneration of directors; (d) time and manner of election of directors; (e) time, place and notice for all meetings; (f)all other particulars of the affairs of the corporation(s.129(1)). (note some by-laws are limited by the Act e.g., s.96(2)). The by-laws shall not provide for less than ten days notice for a meeting.

Finance

The directors may pass by-laws to borrow, charge, mortgage, and pledge security. But no such by-law is effective until confirmed by two thirds majority at a General Meeting (s.59(1)(3)). At every Annual General Meeting the directors shall lay before the members financial statements of profit and loss, surplus, source and application of funds, a balance sheet and all financial information required by by-laws or letters patent (s.97(1)). The auditors report must also be presented at the Annual General Meeting (s.96(2)).

Members

Generally speaking one member gets one vote unless different classes of membership are stipulated in the letters patent (s.67). Members "shall not, as such be held answerable or responsible for any act, default, obligation, or liability of the company."(s.56(1)) Directors must disclose to the membership any direct or indirect interest in any proposed contract with the association. If such interest is not disclosed the director is liable for any profit made and guilty of an offence (s.71).

Recording, Registering and Penalties

The association must keep (1) letters patent; (2) all by-laws and special resolutions; (3) alphabetical listing of all members within the last ten years and their addresses; (4) the names, addresses and employment of directors.(s.300). The association must keep proper accounting books (s.302). All documents must be open to members, creditors and their personal representatives at the head office, during regular business hours(s.304.) Any refusal is liable on summary conviction for a fine up to $200.

Prince Edward Island

A) Review of the Prince Edward Island Companies Act: Legal Obligations

Letters Patent and Incorporation

The Minister may, by letters patent, grant a charter to one or more persons who apply, to create an incorporated company for any purposes or objects to which the legislative authority of the Legislature extends (Sec. 4).

The applications for letters patent must be filed with the office of the Director and include:

- proposed corporate name,
- whether the company is to be public or private,
- the purpose of incorporation,
- the place where the registered office will be situated,
- the proposed amount of capital stock, the number of issued shares, where there are more than one class of shares, the rights, preferences and restrictions attaching to each class of share, and
- a register of shareholders and directors (Sec. 6)

The Act provides a list of powers which may be exercised by the company (Sec. 15) and the company may, by a resolution passed by the owners of at least two-thirds of the total shares in the company, at a special meeting, authorize the directors to apply for supplementary letters patent extending or restricting the powers of the company or any provisions in the letters patent (Sec. 17).

By-laws

The directors may make by-laws not contrary to the letters patent of a company to regulate matters including the declaration and payment of dividends, the number of directors and their qualifications, the appointment, functions and duties of all officers and employees, the calling of meetings, the allotment of stock and related issues, and the conduct of the affairs of the company (sec. 29). The shareholders must confirm such changes and do so by re-electing the directors at the next general meeting (Sec. 25).

Corporate Finance:

Shares of a corporation may be without nominal or par value (Sec. 13). If a company has only one class of shares the rights of all shareholders must be equal in all respects (Sec. 13.3) but where the letters patent provide for more then one class, they must set out the special rights, preferences and restrictions attaching to each class (Sec. 6.g).

Directors and Shareholders:

The directors, the number of which is to be designated in the letters patent (Sec. 6.h), manage and supervise the affairs of the corporation (Sec. 21) and no company with listed shares can have less than three directors (Sec.21.2). The directors of the company listed in the letters patent continue as directors until others replace them at a general meeting (22). Any by-law to increase or decrease the number of directors must be approved by two-thirds of shareholders present (Sec. 27). The directors are personally liable for any responsibility incurred by them on account of the company without the sanction of the company (Sec. 83).

Annual Shareholder Meeting:
The shareholders elect the directors at the annual shareholder meeting (Sec. 24) on the basis of one vote per common share. The directors must give notice of at least fourteen days for the annual general meetings (Sec. 25.b). The directors of a company shall lay before its shareholders a full and clear statement of the affairs and financial position of the company at or before each annual general meeting (Sec. 79).

Shareholders holding one-fourth of the total shares shall at all times have the right to call a special meeting for the transaction of any business specified in any written requisition or notice as these shareholders may issue (Sec. 31).

Records, Filing, Penalties and Dissolution by Registrar:
Records:
A company must at all times have a registered office in Prince Edward Island (Sec. 67) and must prepare and maintain at its registered office or at such other place in Prince Edward Island:

- copy of letters patent incorporating the company, or of any supplementary letters patent and of any by-laws
- securities register with up-to-date list of shareholders
- register of directors

Shareholders and creditors of a company are entitled access to the records (Sec. 52). A company must produce and maintain its records and the company must take steps to prevent their falsification (Sec. 53).

Every incorporated company must file with the Director an annual return (Sec. 80).

The Director may dissolve the company where it has not commenced business within three years after having been granted letters patent, it has not carried on business for three consecutive years, or it is in default for a period of one year in sending to the Director any fee, notice, or return as required by the Act (Sec. 72).

**** The reader will find additional information concerning the incorporation process at the following web site: **http://www.gov.pe.ca/infopei/Business/index.php3**

B) The Prince Edward Island Co-operative Associations Act: Legal Obligations
"The purpose of this Act is to provide for the incorporation, inspection, examination and supervision of associations whose primary purpose is to provide service to their members and which belong to the people who use their services, the control of which rests equally with all their members, and the gains from which are distributed among the members in proportion to the use they make of these services" (sec. 2).

Three or more people may apply to the Registrar for incorporation as a co-operative (sec. 5). Incorporation as a co-operative in PEI requires that an association operate on a co-operative basis. According to section 1 (d) of the Act operating on a co-operative basis "means the carrying on of an enterprise organized, operated and administered in accordance with the following principles and methods:

(i) each member or delegate has only one vote,
(ii) no member or delegate may vote by proxy,
(iii) interest or dividends on share or loan capital is limited to the percentage fixed in the

articles of incorporation, or by-laws of the association,

(iv) the enterprise is operated as nearly as possible at cost after providing for reasonable reserves and the payment of crediting of interest or dividends on share or loan capital, and

(v) any surplus funds arising from the business of the organization, after providing for such reasonable reserves or dividends, unless used to maintain or improve services of the organization for its members or donated for community welfare or the propagation of co-operative principles, are distributed in whole or in part among the members or the members and patrons of the organization in proportion to the volume of business they have done with or through the organization."

The co-operative can be dissolved by the inspector of co-operatives if it is show that the co-operative is not operating on a co-operative basis (sec. 45).

Co-operatives can be associations with, or without, share capital (sec. 5). In co-operatives not requiring share capital revenue is often raised through membership fees.

Incorporation

The applicants must file articles of incorporation and by-laws for review and approval or rejection by the Registrar, and an application fee (sec. 11).

Articles of Incorporation

The articles must be filed in the form approved by the Registrar. The articles of incorporation shall state (sec. 6 & 7):

"(i) the name of the association with the word "Co-operative" as a part of its name and with "Limited" as the last word in its name,

(ii) the objects of the association,

(iii) that the liability of the members is limited, and

(iv) (in the case of co-operative with shares) the par value of the shares; in the case of a co-operative without shares, the amount of annual or other periodic membership fee as is prescribed by the by-laws;"

The articles and the by-laws must be approved by the Registrar for the incorporation to come into effect (sec. 4). Co-operatives may amend their articles of incorporation through an extraordinary resolution (sec. 17). Such resolutions must be filed with the Registrar within fifteen days of being passed by the membership, are only in effect once they have been approved by the Registrar (sec. 30).

The liability of members is limited to, in the case of co-operative without shares, to the unpaid amount, if any, on their shares, in the case of co-operative without shares, limited to the amount unpaid, if any, on membership fees (sec. 5).

Co-operatives are prohibited from participating in the activities of political parties, directly or indirectly (sec. 16).

By-laws

The co-operative may make by-laws as appropriate to its operations but the by-laws must be consistent with the Act and be approved by the Registrar (sec. 19(2,3), 4). The by-laws once submitted by the co-operative and approved by the Registrar are binding to all of the members of the co-operative (sec. 14).

Finances

Shares

Shares are not transferable except in the case of the death of the members (sec.26).

If allowed by the co-operative's by-laws, the co-operative may borrow money from its members (sec. 33).

Surplus

A portion of the surplus at the fiscal year-end is to be set aside as a reserve, as stipulated by the regulations (sec. 34(2)). Funds remaining after allocation for reserves is to be allocated to members in "proportionate to the business done by each member with, or through" the co-operative (sec. 34(4)).

Financial Reporting

The directors must present the members, at the annual general meeting, with financial statements, for the past financial year-end (sec. 40). The co-operative must appoint an auditor each year, unless the members agree to not use the services of an auditor for that year (sec. 39, 38).

Membership and Meetings

The board of directors (sec. 23) must approve all members. Members may withdraw from the co-operative in accordance with the by-laws. Members so doing will receive the value of the shares and any monies owed to the members by the co-operative, but they may be subject to a waiting period of up to six months (sec. 27 (a)). The co-operative is not required to provide the member payment for withdrawn shares if to do so "would impair the financial stability of the co-operative" (sec. 27).

"A member who fails in the observance of any of the regulations or the by-laws of the association may by resolution of the board of directors be excluded from membership in the association"(sec. 27). The member is entitled to a refund of her/his share capital and other monies credited to the member. The member "excluded" from membership is entitled to appear personally and appeal her/his case before the membership at the next general or special membership meeting.

Meetings

An annual general membership meeting must be held within four months of each fiscal year-end (sec. 28). A special membership meeting, i.e. a general membership meeting other than the annual meeting may be called at any time as prescribed by the by-laws (sec. 28(3)). Proper notice as prescribed in the by-laws must be provided for all membership meetings (sec. 28 (4)).

Members are entitled to one vote on matters at general meetings regardless of how many shares they hold (sec. 29).

Directors

A board of at least three directors (sec. 31) shall manage the affairs of the co-operative. Directors are elected at the annual meeting. A director can be removed by the membership, before the end of her/his term, at a special or annual membership meeting by a vote of at least two thirds of the members (sec. 31 (6)).

Recording, Reporting and Penalties

Recording

According to section 22 of the Act every "association shall keep a register of members and enter therein the following particulars in respect of each member:

(a) the names and addresses of members;
(b) the date at which each person became a member;
(c) the date at which each person ceased to be a member;
(d) the name and address of each person nominated by a member as his beneficiary and the date of the nominations.

Every association having share capital shall keep a share register and enter therein a statement of the shares held by each member and of the amount paid and agreed to be considered as paid by the member.

"The register of members shall be kept at the registered office of the association and shall ... be open to the inspection of any member". A shareholder may inspect the portion of the share register that deals with the particulars of her/his shareholdings (sec. 22).

The minutes of general and special membership meetings shall be kept at the co-operative's registered office and must be available to the membership for inspection (sec. 29 (6)).

Reporting/filing

The co-operative must send the PEI Inspector of co-operatives notices of all general or special membership meetings (sec. 41). Copies of the co-operative's financial statements must be sent to the Director annually along with an annual statement in the form stipulated by the inspector (sec. 41).

Penalties

According to section 45 of the Act the Minister responsible for co-operatives "may direct the Inspector to dissolve by order an association to which this Act applies if the Minister is satisfied that:

(a) the incorporation was obtained by fraud or mistake;
(b) the association exists for an illegal purpose;
(c) the association has willfully, after notice by the inspector, violated any of the provisions of this Act or the regulations;
(d) the association is no longer operating on a co-operative basis; or
(e) the number of members of the association has been reduced below the minimum number required by this Act for the incorporation of the association."

An individual who contravenes the Act is liable to prosecution and a maximum fine of $2,500. A co-operative is liable for a maximum fine of $5,000 for contravention of the Act (sec. 61).

C) Prince Edward Island Non-Profit Corporations: Legal Obligations

Persons wishing to incorporate "a body corporate...without share capital, for the purpose of carrying on,... without pecuniary gain to its members, objects of a...religious, philanthropic, charitable...social" nature, must apply to the Minister for the granting of a charter by letters patent (s.89). Once incorporated the company has a wide range of legal powers, e.g., power to acquire and hold property, to sue and be sued, to enter contracts, to borrow money (s.14 & 15).

Incorporation and by-laws

Three or more people, over the age of eighteen may apply to the minister for the granting of a charter by letters patent (s.89 & 90(1)). The application must include (a) the name of the company (b) the purpose for which incorporation is sought (c) the place inside Prince Edward Island where the head office is to be located (d) the name and full address of each applicant and (e) the names (not less than three) who will be the first or provisional directors (s.90(1)). The petition for letters patent must be accompanied by a memorandum of agreement which sets forth the by-laws including the following issues: (a) the conditions of membership (b) mode of holding meetings, quorum, the rights of voting and enacting by-laws (c) the mode of repealing/amending by-laws (d) the appointment/election/removal of directors, their powers and remuneration (e) audit of accounts and appointment of auditors (f) whether and how members may withdraw (s.90(2)). Applicants may ask to have embodied in the letters patent anything which would otherwise be a by-law (s.90(3)). To change or add to the letters patent a resolution must be passed by two thirds majority of all members at a general meeting authorizing the directors to apply for supplementary letters patent (s.17). The charge for supplementary letters patent is $250 (s.1(3) Reg EC678/95).

Finance

At every annual general meeting the directors must lay before the members a full and clear statement of the affairs and financial position of the company (s.79). The funds of the company may not be used to purchase the stock of another company unless expressly authorized by by-law and confirmed at a general meeting (s.61). The directors may borrow money on the credit of the company, may mortgage or pledge the property of the company and may issue bonds or debentures only if authorized by by-law which is then sanctioned by two thirds majority of members at a general meeting (s.78).

Members

Members are not personally responsible for any act or liability of the company (s.57). All other aspects of membership are determined by the initial memorandum of agreement (see above). Directors generally have full power to administer the company(s.28).

Recording, Registering and Penalties

Books containing (a) the letters patent, any supplementary letters patent and all by-laws (b) alphabetical listing of the names of all members (c) the address and calling of each member must be kept at the head office (s.50). The books must be available for inspection by members and creditors of the company or their representatives during reasonable business hours (s.52(1)). If there is a refusal to allow inspection it is an offence liable on summary conviction to fine not more than $50 and costs or thirty days in prison. An annual return must be filed with the Minister indicating who the officers and directors are (s.91(3)). Any director or servant who knowingly falsifies the books is criminally liable and liable for any damages which are a result (s.54).

Quebec

A) Quebec Childcare Centres and Childcare Services Act: References to Form of Incorporation and Parental Involvement

The Minister may issue a permit to operate a child care centre if two thirds of the directors are parents of children attending or planning to attend the centre (sec. 7). The Minister is able to make regulations specifically relating to non-profit organizations and co-operatives "establishing rules for the election of the directors ... and for the operation of its board of directors" (sec. 7).

Child care centres in Quebec must form a "parents committee composed of five persons elected by and from among the parents of children" attending the centre. The committee must be consulted with on all matters relating to the activities of the children at the centre (sec. 10). Parent committees are not required for centres where the majority of members of the board of directors are parents of children attending the centre (sec. 10).

The parent committee must meet at least four times a year (sec. 10.2).

B) Review of the Quebec Companies Act: Legal Obligations

Incorporation under the Companies Act enables a business a series of benefits such as: perpetual existence; the power and capacity of a natural person; the ability to raise capital through issuing shares, while limiting the liability of the investors to the amount they have invested in the company. Each common share entitles its holder to one vote at members meeting, thus the more shares held by a member the greater the number of votes the member is entitled to. Directors are elected by the members and act on their behalf in carrying out the management of the company. Incorporation gives rise to a series of legal obligations to which the following section gives a general overview. Reporting companies (i.e. those who trade shares publicly) are subject to additional regulation.

Articles of Incorporation and By-laws

The Articles of Incorporation establish the terms and conditions of incorporation. The articles form the core of the application for incorporation, submitted to the province's Director. Any changes to the incorporating articles such as creating new class of shares, changing the shares of any class, changing the number of shares of same class, dividing class of shares, altering restrictions on business activities, and changing the name of the corporation, must be confirmed by two-thirds of the votes cast by the shareholders at a special general meeting (Sec. 123.103). Any amendment must be filed with the Inspector General (Sec. 123.104) after having been signed by one of the directors (Sec. 123.103).

Unless the articles or by-laws or unanimous shareholder agreement state otherwise, the directors may, by resolution make, amend or repeal any by-laws that regulate the business or affairs of the corporation (Sec. 123.101).

The directors of a company may make a by-law to subdivide existing shares into shares of smaller amounts, to changed authorized shares with a part value into shares without par value and vice versa, and to increase or reduce the capital stock, but any such change must be approved by at shareholders holding at least two thirds of the total value (Sec. 63).

Corporate Finance:
All shares of a corporation must be registered with and/or without par value (Sec. 123.39) and a securities register must be maintained within the province (Sec. 123.113).

If a corporation has only one class of shares, unless the articles provide otherwise, each shareholder has the right to vote at any shareholder meeting, to receive any dividends declared by the corporation, and to receive the remaining assets of the corporation upon winding-up (Sec. 123.41). Unless provided otherwise, where there are more than one class of shares, the rights attaching to one class attach to every share (Sec. 123.41).

Directors and Shareholders:

The affairs of the company shall be managed by a board of one or more of directors, (Sec. 123.72) and no corporation with listed shares can have less than three directors (Sec. 123.72). Directors are not required to be shareholders in the corporation (Sec.123.74).

Directors remain in office until they are re-elected, replaced or removed (Sec. 123.76) and shareholders may be elected at such times and in such manner and for such term, not exceeding two years as by-laws provide (Sec. 88) and may, by special resolution at a special meeting remove any directors from office (Sec.123.77).

Directors are jointly and severally liable to its employees for all debts not exceeding six months' wages to services rendered to the company.

Annual Shareholder Meeting:
The annual shareholder meeting must take place within the province (Sec. 98) and must be held at that period specified in the by-laws and in the absence of by-laws must be held at the place named as the place of the head office of the company on the fourth Wednesday of every January each year (Sec. 98). Shareholders must receive at least ten days notice for shareholder meetings (Sec. 97). Directors are elected on the basis one vote per share.

At the annual meeting, the directors must place before the shareholders comparative financial statements, a general statement of income and expenditure, report of the auditor, if any, balance sheet, and any further information respecting the financial position of the company as required by the articles, by-laws (Sec. 98.2).

A unanimous shareholder agreement that restricts the powers of the directors to manage the business and affairs of the corporation is valid (Sec. 123.91).

Records, Filing, Penalties and Dissolution by the Registrar:
Corporate Records:
The company must at all times have a head office within Quebec (Sec. 123.34) where the following official records are kept (Sec. 123.111):

- the articles and by-laws and all amendments thereto, and a copy of any unanimous shareholder agreement
- minutes of proceedings of meetings and resolutions of shareholders
- adequate accounting records
- register of directors
- securities register listing names and addresses of each shareholder, the number of shares owned and the date of the issuance and transfer of each share (Sec. 123.113).

A notice of the registered office and change of address and articles of incorporation must be sent to the Inspector General (Sec. 123.12). Every corporation must send to the Director an annual return in prescribed form (Sec. 121). Shareholders are entitled to examine the records (Sec. 123.114).

Upon the application of an applicant, the Inspector General may issue an order directing the investigation of the corporation (Sec. 110).

Contravention by anybody of any provisions of the Act or regulation for which no specific punishment is provided is guilty of an offence and is liable on summary conviction to a fine of $200.00. (Sec. 123).

C) Review of the Quebec Co-operatives Act: Legal Obligations

Under the Act a "co-operative is a legal person in which persons having economic and social needs in common unite for the prosecution of an enterprise according to the rules of co-operative action to meet those needs." (sec. 3) "The activities of the co-operative with its members do not constitute a means or earning a profit" (sec. 128). Section 4 of the Act states that the "rules of co-operative action are as follow:

(1) membership of the co-operative is subject to the member's using the services offered by the co-operative and to the co-operative's ability to provide him with them;
(2) no member is entitled to more than one vote, irrespective of the number of shares held, or to vote by proxy;
(3) the payment of interest on the capital stock must be limited;
(4) a reserve may be established;
(5) the surplus earnings or operating surplus must be allocated to the reserve or to rebates to members in proportion to the business carried on between each of them and the co-operative, or to other accessory purposes determined by law;
(6) co-operation must be encouraged between the members and the co-operative, and among co-operatives;
(7) the co-operative education of the members, executive officers and employees of the co-operative must be promoted."

Incorporation

At least twelve people are needed to found a co-operative and they must "have a common interest as future users of the co-operative (sic)." With the approval of the Minister the number of founders may be reduced to five (sec. 7).

Articles of Incorporation

The application for incorporation must include proposed articles of incorporation and by-laws (sec. 10).

"The articles of the co-operative must set out

- its name;
- the judicial district in which its domicile in Québec is located;
- the object of its constitution;
- the name and domicile of each founder and, where applicable, the name of the founding partnership with the name and domicile of its members, or the name and domicile of the founding legal person together with the Act under which it is constituted" (sec. 9).

"The articles may set out any other provision permitted by law to be set out in the by-laws, in addition to the provisions permitted by this Act to be set out" (sec. 11).

The application for incorporation must also include the following documents:
- "a notice of the name and domicile of the person designated as provisional secretary of the co-operative;
- a notice of the manner and time in which the organization meeting will be called;
- a notice of the domicile of the co-operative" (sec. 12).

Any amendment or addition to the articles of incorporation requires a by-law passed at a general meeting (sec. 118). Such a by-law must be passed by two-thirds of the members at a general members meeting (annual or special meeting call for that purpose) (sec. 119). Each by-law must be submitted to the Minister for approval. The by-law does not come into effect until approved by the Minister (sec. 120, 121 and 13).

Members and Member Meetings

Members must be approved by the directors (sec. 51). The directors of the co-operative may suspend, for six months, and/or expel, a member (sec. 57).

General Meetings

Annual General Meeting

An annual general meetings "must be held within four months" of the end of the fiscal year-end to, among other matters, receive the financial statements and directors annual report (described in sec. 132) and the auditors report, and to determine the interest payable on shares, to agree on the distribution of surplus earnings and to elect directors (sec. 76). Notice for a general meetings (annual and special) must be provided as stipulated in the by-laws or at least five days before the meeting (sec. 66).

Special Meetings

The directors may call a special meeting as they deem appropriate. A special meeting must also be held if requested in writing by twenty-five percent of the co-operatives members (sec. 77). Proper notice must be provided, as per the by-laws, to the members for the meeting. Only the matters presented in the notice of the meeting may be discuss and decided upon at the meeting (sec. 70).

No member at general meetings is entitled to more than one vote regardless of the number of shares she/he holds (sec. 68). "A resolution in writing, signed by all the members, is as valid as if it had been passed at a general meeting" (sec. 67).

Directors

The directors manage the affairs of the co-operative on behalf of the members (sec. 89). The co-operative's by-laws may stipulate which powers the directors cannot exercises without the "authorization of a general meeting" (sec. 89). The number of directors must be stipulated by the co-operative's by-laws, but cannot be less than five or more than fifteen (sec. 80). All members of the co-operative, except employees of the co-operative are eligible to run for positions on the board of directors (in worker co-operatives employees are eligible) (sec. 81). If the by-laws allow, non-members can be elected as directors, provided they are "recommended as candidates" by the directors (sec. 81.1) and that the numbers of non-member directors not exceed twenty-five percent of the total members of the board of directors. (sec. 81.1). The members at a special meeting (sec. 99) may dismiss a director.

Within fifteen days of a change of director(s) the co-operative must provide the Minister with notice of the change along with an updated list of directors (sec. 88). Directors are not entitled to any remuneration, but can have their expenses covered (sec. 102).

Co-operative with less than twenty-five members may agree to not elect directors for one year. The agreement may be repeated annually but must be approved each year by at least ninety percent of the members (sec. 61). When such an agreement is in place the members collectively take on the responsibilities and rights of directors (sec. 62).

Finance

Shares

The financial capital of the co-operative is divided into common and, if allowed by the co-operative's by-laws, preferred shares (sec 37). Every member must hold a minimum number of shares as prescribed by the by-laws (sec. 38.3). No interest is payable on common shares, and they may only be transferred with the approval of the directors (sec. 41, 39).

Preferred shares cannot be redeemed by the co-operative within three years of issue (sec. 48). Preferred shares do not entitle the holder to attend, or vote at, the co-operative's general meetings (sec. 49). The Act also allows for "participating preferred shares" that, if provided for in the by-laws, allow the holders to attend general meetings "but not the right to speak" (sec. 49.3). The shares "may entitle their holders to receive annual interest of up to twenty-five percent of the amount paid for the shares" (sec. 49.4). The Act also allows the holder of participating preferred shares to receive up to twenty-five percent of the co-operative's operating surplus, to be determined at the annual meeting (sec. 49.4).

Audit

A co-operative must appoint an auditor at each annual general meeting, unless the co-operative is exempted by the Minister, in consideration of the co-operative's "volume of business" (sec. 135).

The co-operative may require, if stipulated by the by-laws, that the members contribute financially to cover the operating costs of the co-operative (sec. 54).

Operating Surplus

At least twenty percent of the operating surplus remaining in a fiscal year shall be allocated to reserves, or as rebates in the form of shares in the co-operative until "equity is equal to at least 30 percent of the debts of the co-operative" (sec. 146). Any surplus remaining after reserves and payment of interest on preferred shares is allocated to members as rebates "in proportion to the business done by each (of the members), during that fiscal year, with the co-operative" (sec. 143). The members at the annual general meeting (sec. 143) must approve any such rebates. The members may decide at the meeting that the rebates are to be allocated as shares, preferred shares or as "loans to the co-operative by its members" rather than paid directly the member as cash rebate (sec. 152).

The articles of the co-operative may prohibit "the allotment of rebates" sec. 148).

Register, Reporting and Penalties

According to section 124 of the Act every "co-operative shall keep a register at its head office containing

(1) its articles and by-laws, the agreement of its members referred to in section 61 and the latest notice of the address of its head office;
(2) a list of its directors containing their names and domiciles and stating the starting date and duration of their terms of office;
(3) the minutes and resolutions of its general meetings;

(4) the minutes of the meetings and the resolutions of the board of directors, of the executive committee and of any other committee;
(5) a list of the members and other shareholders stating their names and domiciles;
(6) the number of common shares, preferred shares and participating preferred shares held by the members and shareholders;
(7) the subscription, redemption, repayment or transfer dates of each share and the amount, if any, owing on each share."

Reporting
Within thirty days of the annual general meeting the directors must send a copy of the annual report, prepared for the general meeting, to the Minister (sec. 134). The report must include the following:
"(1) the name and domicile of the co-operative and any other name under which it is identified;
(2) the names and domiciles of the directors and executive officers;
(3) the number of members and of associate members, if any, of the co-operative;
(4) the financial statements for the last fiscal year;
(5) the auditor's report;
(6) the number of persons, if any, employed by the co-operative;
(7) the other information required by by-law" (sec. 132).

Penalties
Any person guilty of contravening the Act is liable to a fine of at least $200 to a maximum of $4,000 for each offence, "and to a fine of not less than $500 nor more than $10,000 for each subsequent conviction" (sec. 248).

D) Review of Quebec Companies Act Relating to Association Having No Share Capital (non-profit corporations): Legal Obligations
Three or more people may apply for incorporation if the association has objectives that are of a national, patriotic, religious, philanthropic, charitable, scientific, artistic, social, professional, athletic or sporting character, or the like, but without financial gain (sec. 218). The application and approval is based on the letters patent system of incorporation. Under this system the application is made to the Minister or department responsible and the approval is left to the discretion of the Minister. Incorporation was not a right but rather a discretionary act on the part of the Minister responsible.

The application for incorporation must include the following information:
- "The proposed name of the (corporation);
- The purposes for which constitution as a legal person is sought;
- head office;"
- The limit on the amount of land and buildings that may be owned by the corporation, or the limit on revenue derived from the property.

Letters Patent
Associations may place provisions in the letters patent that cannot be changed by the association under any circumstances (sec. 8). The association may apply to amend the letters patent if the amendment has been approved by two thirds of the members at a special meeting called to consider the motion for amendment (sec. 37).

Board of Directors

A board of at least three directors (sec. 83) must oversee the association's affairs. Directors must be members (sec. 86.1). Directors are to be elected by the members annually for terms not exceeding two years (sec. 88). Directors may fill a vacancy by a appointment (sec. 88).

The directors may make and/or amend by-laws. The by-laws approved by the directors are only in effect until the next annual membership at which time they must be reviewed and approved by the member is the by-law change is to remain valid (sec. 91(subsec. 2 &3).

Financial

Annual membership fees must be paid at the time and date set by the by-laws of the company (sec. 222).

Members and Meetings

An annual member meeting must take place within the province (Sec. 98) and must be held at that period specified in the by-laws and in the absence of by-laws must be held at the place named as the place of the head office of the company on the fourth Wednesday of every January each year (Sec. 98). Members must receive at least ten days notice for general members meetings (Sec. 97).

At the annual meeting, the directors must place before the members comparative financial statements, a general statement of income and expenditure, report of the auditor, if any, balance sheet, and any further information respecting the financial position of the company as required by the articles, by-laws (Sec. 98.2, 225(3)). If the directors fail to call the meeting within twenty-one days, the requesting members (ten percent of the membership may issue a notice for, and convene, the meeting (sec. 99, 225(3)). The directors on their initiative may also call special meetings. Any notice for the special meeting must state the business to be addressed at the meeting (sec. 99).

Records, Reporting and Penalties

Records

The association must annually prepare and make available to members, a list of members (sec. 223).

Section 104 of the Act states that the association "shall cause a book or books to be kept by the secretary, or by some other officer specially charged with that duty, wherein shall be kept recorded:

- a copy of the constituting act and of the by-laws of the company;
- The names, alphabetically arranged, of all persons who are or have been shareholders;
- The address and calling of every such person, while such shareholder, as far as can be ascertained;
- The names, addresses and callings of all persons who are or have been directors of the company, with the several dates at which each became or ceased to be such director."

"Every company shall keep, at its head office in Québec, one or more books in which are entered:

(a) its receipts and disbursements and the matters to which each of them relates;
(b) its financial transactions;
(c) its credits and liabilities;

(d) the minutes of the meetings of its (members) and of its directors and of the votes taken at such meetings" (sec. 107).

Every corporation must send to the Director an annual return in prescribed form (Sec. 121).

Penalties

Upon the application of an applicant, the Inspector General may issue an order directing the investigation of the corporation (Sec. 110).

Failure to keep proper books as defined by the Act can result in fine of $20/day until the association is in compliance (sec. 108 (2)).

Saskatchawan

A) Saskatchawan Child Care Act: References to Forms and Parental Involvement

Corporate Ownership of Licensed Facilities

The Act does not allow incorporated business or associations (non-profit corporations and co-operatives) to obtain a license if they have an "interest in the operation" of more than one other facility. In other words incorporated businesses or organizations may only have interests in a maximum of two licensed child care centres (sec. 4(2)). A shareholder in a corporation that owns a facility is deemed to have an interest in the operation of the facility(sec. 5(5)). Therefore an investor may only have investments/shares in a maximum of two licensed child care centres.

The Act allows for co-operatives and non-profit corporations to apply for a third license, if the board of a non-profit corporation or a co-operative "has a majority of its members as parents whose children:

(a) are presently enrolled at the facility;
(b) were enrolled at the facility within the past 12 months; or
(c) if the facility has not yet opened, will be enrolled at the opening of the proposed facility" (sec. 7(2)).

The Minister is enabled by the Act to provide exemptions to the board composition for some co-operatives and non-profit corporations based on the "nature" organization (sec. 7(3)).

Parental Involvement

Every licensed operator that is not a co-operative or non-profit corporation where the majority of the board members are parents of children attending the centre, must have a parent advisory committee. The committee must be composed of parents of children attending the centre elected by the parents of children attending the centre (sec. 7(1)).

B) The Saskatchewan Business Corporations Act: Legal Obligations

Incorporation under the Business Corporations Act enables a business a series of benefits such as: perpetual existence; the power and capacity of a natural person; the ability to raise capital through issuing shares, while limiting the liability of the investors to the amount they have invested in the company. Each common share entitles its holder to one vote at members meeting, thus the more shares held by a member the greater the number of votes the member is entitled to. Directors are elected by the members and act on their behalf in carrying out the management of the company. Incorporation gives rise to a series of legal obligations to which the following section gives a general overview. Reporting companies (i.e. those who trade shares publicly) are subject to additional regulation.

Articles of Incorporation and By-laws

The Articles of Incorporation establish the terms and conditions of incorporation. The articles form the core of the application for incorporation, submitted to the province's Director. Any changes to the incorporating articles such as creating new class of shares, changing the shares of any class, changing the number of shares of same class, dividing class of shares, altering restrictions on business activities, and changing the name of the corporation (Sec. 167), must be approved by special resolution (a resolution requiring approval by at least two thirds of the members).

A shareholder entitled to vote at an annual meeting may make a proposal to make, amend, the articles (Sec.169) and may include in the proposal nominations for the election of directors if the proposal is signed by shareholders holding not less than five percent of the shares in aggregate or in a separate class of shares (Sec. 131.4). Any amendment which are adopted must be sent to the Director (Sec.171) who then issues a certificate of amendment (Sec. 172).

Unless the articles or by-laws or unanimous shareholder agreement state otherwise, the directors may by resolution, make, amend or repeal any by-laws that regulate the business or affairs of the corporation (Sec. 98). The directors must submit any amendments to the shareholders at the next shareholder meeting who may by ordinary resolution confirm, reject, amend, or repeal the by-law (Sec. 98.2).

Corporate Finance:
All shares of a corporation must be registered and the corporation, within the province (Sec. 46) must maintain a central share register.

Shares shall be without nominal or par value (Sec. 24). If a corporation has only one class of shares, unless the articles provide otherwise, each share carries the right to vote at any shareholder meeting, to receive any dividends declared by the corporation, and to receive the remaining property of the corporation upon dissolution (Sec. 24.3). Where there are more than one class of shares, the rights, privileges restrictions and conditions of shares of each class must be set out in the articles and those rights contained in Sec. 24.4 must attach to at least one class of shares (Sec. 24.4).

Directors and Shareholders:
The directors, the number of which is established by the by-laws, exercise the power of the corporation through the employees, and direct the management of the business and affairs of the corporation (Sec. 97). No Corporation with listed shares can have less than three directors at least two of whom are not officers or employees of the corporation (Sec. 97.2). Directors must be elected at a meeting of shareholders by ordinary resolution and shareholders may be ordinary resolution at a special meeting remove any directors from office (Sec. 104).

Directors are not required to be shareholders in the corporation (Sec. 100.2) a majority of shareholders must be Canadian, and directors may be appointed to any office of the corporation (Sec. 116).

A director or officer who is a party to a material contract or who has a material interest in a material contract with the corporation must disclose in writing to the corporation the nature and extent of his interest and failure to comply may result in the court setting aside the contract (Sec. 115).

While the directors are to act honestly and with good faith and with reasonable prudence in the best interests of the corporation and comply with the articles, regulations and by-laws and any unanimous shareholder agreement, no contract, articles, by-laws or resolutions may relieve a director from the duty to act in accordance with the Act or relieves him from liability for a breach of the Act (Sec. 117).

Directors of a corporation are jointly and severally liable to employees for all debts performed for the corporation (Sec. 114).

Annual Shareholder Meeting:

Subject to the articles, the annual shareholder meeting must take place within the province (Sec. 126) not more than fifteen months after the last annual shareholder meeting. Special meetings can be called at any time (Sec. 127).

Shareholders must receive at least twenty-one days notice for shareholder meetings (Sec. 129). At the annual meeting, the directors must place before the shareholders comparative financial statements, report of the auditor, if any, and any further information respecting the financial position of the corporation as required by the articles, by-laws or any unanimous shareholder agreement (Sec. 149). Financial statement approved by the director must be sent to the shareholders not less than twenty-one days before the meeting (Sec. 153).

A unanimous shareholder agreement that restricts the powers of the directors to manage the business and affairs of the corporation is valid (Sec. 97).

Records, filing, Penalties and Dissolution by the Registrar:

Corporate Records:

Corporations must at all times have a registered office within Saskatchewan (Sec. 19) where the following records must be kept:

- copies of articles and by-laws, all amendments to the articles and by-laws, and copies of any unanimous shareholder agreement
- minutes of meetings and resolutions of shareholders
- copies of all notices including notice of directors (Sec. 101, 108)
- securities register comprising a list of names and addresses of shareholders, number of shares held by each shareholder and the date and particulars of issue and transfer of each share (Sec. 46).

A notice of registered office and change of address and articles of incorporation must be sent do the Director (Sec. 7).

Corporations must file with the Director annual return on the prescribed date in the prescribed form (Sec. 273).

Shareholders and creditors of the corporation may examine the records (Sec. 21) including the shareholder list (Sec. 21.3).

A corporation must produce and maintain its records and the corporation must take reasonable precautions to prevent loss or destruction and fabrication, and must facilitate detection and correction of inaccuracies in the register and other records (Sec. 22).

The Director or any interested person may apply for an order dissolving a corporation by issuing a certificate of dissolution or by Court application if the corporation is in default for two consecutive years in sending to the Director any notices required by the Act or in failing to hold annual shareholder meetings, or where the corporation is not carrying on business (Sec. 206) and the Director may dissolve the corporation where it had not undertaken any business within three years of its incorporation date, and has not carried on business for three consecutive years (Sec. 205).

Upon the application of a shareholder, the Court may issue an order directing the investigation of the corporation and any order the Court deems appropriate if appears that the business of the corporation or its affiliates has been carried on fraudulently, in a manner that is oppressive,

or unfairly prejudicial to any interested security holder, if the corporation or its affiliates was formed for fraudulent or unlawful purposes or persons connected to formation of its business affairs have acted fraudulently or dishonestly (Sec. 222).

Contravention by any person of any provisions of the Act or regulation for which no specific punishment is provided is guilty of an offence and is liable on summary conviction to a fine of $500.00. (Sec. 302).

C) Review of Saskatchewan Co-operatives Act: Legal Obligations

Six or more people may apply to the Registrar to incorporate as a co-operative (sec. 6). Where the Registrar considers it appropriate she/he may allow two or more individuals to form a co-operative (sec. 6 (3)). The co-operative must be "organized, operated and administered on a co-operative basis" to be incorporated (sec. 9). Section 3 states that a co-operative basis means that:

(1) "no member or delegate has more than one vote;
(2) no member or delegate is entitled to vote by proxy;
(3) its business is carried on primarily for the benefit of its members;
(4) its membership is voluntary and available, without any artificial restriction or any unlawful basis of discrimination, to any person who can use its services and is willing to accept the responsibilities of membership;
(5) the limit on the interest or dividends on share capital that it pays does not exceed the prescribed rate; and
(6) any surplus or saving arising out of its operation is:
    a) used to develop its business;
    b) used to provide or improve common services to members;
    c) distributed among members in proportion to their patronage with the co-operative;
    d) used to educate its members, officers or employees or the general public in the principles and techniques of economic and democratic co-operation; or distributed to non-profit, charitable or benevolent organizations."

The application to the Registrar, for incorporation, must include the following:

a) "the articles of incorporation in the prescribed form;
b) the by-laws of the co-operative" (sec. 6).

As per section 9, the "Registrar shall not approve an application unless the Registrar is satisfied that:

(a) the formation of the proposed co-operative will be for the convenience and advantage of its members;
(b) the proposed directors are qualified pursuant to section 75; and
(c) the proposed co-operative is organized and will be operated on a co-operative basis."

The Registrar may require that the articles include provisions restricting the business of the co-operative to a specific area or limiting the co-operative from doing a particular area of business (sec.23).

Articles of Incorporation

The articles of incorporation, according to section 7 of the Act, must be presented in the form prescribed by the Registrar and must include the following information:

(a) "the name of the co-operative;
(b) where there is to be share capital:
  (i) the par value of the shares;
  (ii) whether the number of shares to be issued is unlimited or, where limited, the maximum number of shares that may be issued; and
  (iii) where there are two or more classes of shares, the designation of each class, the par value of the shares of each class and the special preferences, rights, conditions, restrictions, limitations and prohibitions attaching to each class;
(c) where there is no share capital, a statement that the interest of each member is the same as that of every other member;
(d) subject to subsection (3), the number of directors or the minimum and maximum number of directors;
(e) the names in full and place of residence of each first director;
(f) the objects or purposes the co-operative is intended to fulfil;
(g) any restriction on the business or businesses of the co-operative."

Directors may not change the articles of incorporation. The members of the co-operative may change the articles of incorporation through a special resolution (sec. 144). A special resolution must be passed by two-thirds of the members voting on a resolution for which the members have been given at least ten days notice of the resolution, and the meeting at which the resolution is to be proposed (sec. 2). The change in the articles does not come into effect until the resolution is approved by the Registrar (sec. 148, 149).

By-laws

The co-operative's by-laws must include by-laws that address the following:
- conditions of membership,
- "the election, term of office and removal of directors and members of committees of directors;"
- where the co-operative has shares, the share structure of the co-operative and the conditions of share ownership;
- the distribution of the property of the co-operative on dissolution of the co-operative;
- any matters, that the members consider necessary or desirable" (sec. 8).

Directors may not change the by-laws (sec. 113). The by-laws may, at any annual meeting or a special meeting called for the purpose, be amended, repealed, or replaced by a two thirds majority vote, if proper written notice has been provide to the members, including the wording of the by-law change (sec. 112). The by-laws changes are not effective until submitted to and approved by the Registrar (sec. 114).

Finance

Shares

The share of a co-operative must have a par value i.e. a specific dollar value, stated on the share (sec. 32). The Act allows for common shares and preferred shares. While transfers of common shares is allowed such a transfer is not valid unless a written application for membership in the co-operative by the buyer of the shares (transferee), is approved by the directors (sec. 49). No member is liable to the co-operative beyond the unpaid portion of his or her shares (sec. 33(4)).

Allocation of Surplus

Any financial surplus left at the end of the fiscal year, after allocation to taxes, financial reserves (as stipulated by the Act), and payment of interest on shares as allowed by the by-laws, can be allocated to the members as a patronage dividend. A patronage dividend is paid "in proportion to the business done by the members with or through the co-operative in that fiscal year" (sec.35).

All or part of the patronage may be applied to the outstanding portion of a members share or be loaned to, or retained, by the co-operative on terms set by the directors (sec. 37). The co-operative may buy back its shares from members (sec.41).

Membership and General Meetings

No person is eligible as a member until her/his application for membership has been approved by a resolution of the directors (sec. 99). Memberships in the co-operative are not transferable unless a written application to transfer membership is approved by the directors or their representative (sec. 49).

A member may withdraw from the co-operative and the co-operative must buy the member's shares, within one year, provided doing so does not undermine the co-operative's financial position (sec. 120 and 42). The directors may terminate a member's membership (by at least a two-thirds vote at a meeting called for the purpose). A member's membership may also be terminated by the membership of the co-operative at a general meeting. The member must have been provided with ten days notice of the general meeting at which the termination of her/his membership is to be decided and the motion must be passed by at least two-thirds of the members who voted on the resolution (sec. 122). If the member's membership is terminated the par value of terminated member's shares must be paid back to the member within one year of the termination (sec. 121 & 122). The member may appeal the termination to the Registrar (sec. 123).

General Meetings

At all general member meetings each member has only one vote regardless of the number of shares held by that member (sec. 110). A co-operative must hold an annual general meeting within six months of the co-operative's fiscal year-end (sec. 103). At each annual general meetings the directors must present the members with financial statements approved by the directors, and with the auditor's report, if the statements are audited (sec. 128 & 129). The directors may call a special meeting, i.e. one that is not required by the by-laws or the Act, at any time. The directors must call a special meeting if requested to do so, in writing, by at least ten percent of the members in a co-operative with less then one thousand members (sec. 104). The Registrar may also call a special meeting (sec. 104).

Notice of General Meeting

A co-operative must provide at least ten days notice to its members of an annual or special meeting, and no more than fifty days notice (sec. 105). The notice of the "special meeting must specify the purpose for which the meeting is being called" (sec. 105).

A written resolution signed by all of the members entitled to vote at a general meeting "is as valid as if it had been passed at a general meeting" (sec. 117).

Member Proposals

Members that are entitled to vote at the annual general meeting may submit to the directors a proposal for discussion at the annual general meeting. The proposal is to be distributed by the directors along with the notice of the meeting and the member may discuss the matter at the meeting, unless the directors refuse to accept the proposal for presentation as per the Act. (sec. 111).

Directors

The directors of the co-operative "direct the management of the business and affairs of the co-operative" (sec. 72). Generally the co-operative must have at least five directors, unless the "number of members is less than six" or unless the number of directors that are eligible according to the Act and the co-operatives by-laws is less than five (sec. 7(3)).

Unless other wise stated in the articles of incorporation or the by-laws the directors are to be elected by the members at the annual general meeting (sec. 74). Directors must be members of the co-operative (sec. 75). No more than "one-third of the directors may be employees of the co-operative" (sec. 74). Holders of "preferred shares are not entitled are not entitled to elect any directors unless the co-operative is in default of any term or condition of the share issue" (sec. 74). Directors are not entitled to remuneration for their work as directors, unless authorized by the by-laws or "an ordinary resolution at a general meeting" (sec. 85).

The members of the co-operative may remove a director from the board "by a resolution approved by two-thirds of the votes case at a general meeting" (sec. 80). A director can not "be removed by the other directors of the co-operative" (sec. 79(3)).

Recording, Reporting and Penalties

Records

A co-operative must keep, and provide access for members to, the following records in its registered office:

(a) "its articles and by-laws and all amendments to its articles and by-laws;
(b) minutes of member meetings and resolutions of members;
(c) copies of all notices of directors and notices of change of directors;
(d) a register of its directors setting out the names, addresses and occupations of all persons who are or have been directors of the co-operative with the days on which each person became or ceased to be a director;
(e) a register of members and shareholders setting out their names arranged in alphabetical or numeric order, their latest address known to the co-operative and the number of shares held by each member or shareholder;
(f) a copy of every certificate issued to it by the Registrar; and
(g) a copy of every order of the Registrar relating to the co-operative" (sec. 27).

Reporting

"Within 30 days after the day of its annual meeting, a co-operative shall:

(a) file with the Registrar an annual return for the previous year, on any form that is provided by the Registrar;
(b) provide the Registrar with a copy of the financial statement placed before its members at its last annual meeting;" (sec. 143).

"The Registrar may require, by written notice, a co-operative or a director or an officer of a co-operative to make a special return on any subject connected with the business and affairs of the co-operative" (sec. 143). The Registrar must be informed of a change in directors within thirty days of the change (sec. 83).

Penalties
Any person that contravenes the Act is liable upon conviction to a maximum fine of $5,000 (sec. 197).

D) Review of Saskatchewan Non-profit Corporations Act: Legal Obligations
A non-profit corporation can be formed by one or more persons (including corporations), not in a state of bankruptcy (s.5) by filing with the Director of Corporations a *Notice of Registered Office* (Form 3), *Notice of Directors* (Form 6) and *Articles of Incorporation* (Form 1) and paying the appropriate registration fee. Upon creation a corporation takes on the capacity, rights and powers of a natural person (s. 15). Among other benefits, this means a corporation may hold title to land in the name of the corporation, may apply for grants or funding from government agencies, and limits the liable of investing "members" of the corporation.

Types of Non-profit Corporations
Under the Act there are two distinct types of corporations: *charitable corporations* and m*embership corporations*

A charitable corporation is one that carries on activities that are not primarily for the benefit of its members. It solicits or has solicited donations or gifts of money or property from the public; receives or has received any grant of money or property from a government in any fiscal year of the corporation that is in excess of ten percent, or any greater amount that may be prescribed, of its total income; is a registered charity (s.2(9)). A membership corporation is one that carries on activities that are primarily for the benefit of its members (s. 2(1)).

The activities of both membership and charitable corporations are limited by the corporation's articles, by-laws and unanimous member's agreements as well as by the Act and Regulations (s. 44).

A corporation may not carry on any activity or exercise any power contrary to its articles (s. 16). The Articles of Incorporation must include: the name of the corporation, the location of the registered office, the classes of membership interest, whether of not the right to transfer interest in the corporation is to be permitted and if it is conditions of the transfer; the number of directors; whether it is a membership corporation of charitable corporation; any restrictions on the activities the corporation may carry out; the persons to whom property shall be transferred to upon liquidation of the corporation (s. 6). Articles may be amended by a special resolution of the corporations members (i.e. approval by at least two-third of members) (s. 161 – 167). By-laws can be made/repealed by directors and approved by members (see below) while unanimous member agreements are agreements that can be passed by members that specifically restrict the powers of directors (s. 136).

Members and Directors
The articles may provide for more than one class of membership with regards to their rights and privileges so long as one class is entitled to vote at meetings (s. 113). The directors of corporation may admit any person as a member of a corporation (note that articles may require such admission to be approved by members)(s. 115). The membership interest is non-

transferable (unless otherwise stated in the articles/by-laws) (s.116). Members of the corporation are not liable for a default of the corporation (s. 32). The Act grants to members a series of rights and obligations:

- Access to Corporate Records – What is available, i.e. minutes, by-laws, articles, financial statements. *(s. 21)*
- Directors shall submit by-laws or amendments to by-laws to the members who may confirm, reject or amend the bylaw. *(s. 90)*
- The right to be elected as a director, unless disqualified. *Section 92*
- Members elect directors. *(s. 93)*
- Directors may only be removed by members. *(s. 96)*
- Right to a fair hearing before membership is terminated or suspended. *(s. 120)*
- Right to receive notices of meetings and of any special business to be transacted. *(s. 125)*
- Consider financial statements and auditor's report, if any. *(s. 125)*
- A member entitled to vote at a meeting of members may submit a proposal. *(s. 127)*
- Right to receive financial statements. *(s. 146)*
- Members shall appoint an auditor to hold office until the close of the next annual meeting. *(s. 149)*
- Articles of Incorporation may be amended by the members. *(s. 161)*
- Members may approve an amalgamation of two or more non-profit corporations. *(s. 168)*
- Members may approve dissolution of the corporation. *(s. 192)*

Directors

Membership corporations are required to have one or more directors and charitable corporations are required to have three or more directors (at least two of who are not officers or employees of the corp) (s. 89). The list of the first director(s) must be included in the forms of application for incorporation, thereinafter directors are elected by the members at annual members meeting (s.93).

The role of the director(s) is to manage the general activities and affairs of the corporation (s. 88). Directors may make by-laws so long as members at the next general meeting (s. 90) approve them. Subject to the articles, by-laws, or any unanimous member agreements, the directors may appoint officers and specifically delegate to officers many of their duties (s. 108; but see s. 102(3) for restrictions). Directors may borrow money without authorization of members as per the process outlined in s. 176 (unless otherwise stated in articles, by-laws, or unanimous member agreements). Unless the articles, by-laws or unanimous member agreements state otherwise, directors must only seek member approval for a sale, lease, or exchange of property of the corporation if is outside the ordinary course of carrying activities of the corporation to do so (s. 176). Subject to the articles, by-laws, and unanimous member agreements, a director may raise capital by issuing securities (debt obligations) to members (s. 25). The securities are general transferable and fully negotiable instruments (s. 35) unless it is noted otherwise on the security certificate as per s. 36(8) or restricted as outlined in ss. 116, 25-68. Profits made by the corporation cannot be distributed to members, they must be used to further its activities (s. 30).

The directors must call an Annual Members Meeting at least every fifteen months (s. 123). Members are entitled to make proposals for matters to be raised at the meeting (s. 127).

Directors are responsible for preparing annual financial statement that must be submitted to the members at the Annual Members Meeting and filed with the Director of Corporations unless the corporation has authorization for an exception from the Director of Corporations (ss. 142, 143). Members of a membership corporation may appoint or resolve not to appoint an auditor that meets the requirements of the Act (ss 148, 150) depending on the revenue of the corporation.

Records, Filing Offences and Dissolution

The Act outlines a number of specific obligations upon a corporation. A corporation must prepare and maintain certain records that are available to the members and directors of the corporation, including: the articles and the by-laws, minutes of meetings and resolutions of members; copies of all notices of directors and change of directors; a securities register; a register of members entitled to vote, adequate accounting records and records containing minutes of meetings and resolutions of the directors and any committee. A corporation that, without reasonable cause, fails to maintain these records may be fined up to $5,000. (ss. 20, 21, 128) The Director may refuse to receive documents from a corporation or strike the corporation from the Register if it does not comply with the Act or Regulation as outlined in s. 269 and 272.

A member, a security holder, a director, may apply to the court to investigate any activities and affairs of a corporation (s. 214) If corporation found acting contrary to its articles, by-laws, unanimous member agreements or the Act, a court may grant relief to the claimant and order compliance (ss. 222-233).

A court may order compliance with the Act and person may be fined up to $500 (unless otherwise stated) for not complying with the Act (ss. 280, 281)

Upon dissolution any remaining property of a membership corporation may be divided equally among members (s. 209). Any remaining property of a charitable corporation does not go to member but may be distributed (as set out in articles or if not set out as determined by a court) to a corporation carrying on a similar activity, a registered charity, a municipality, the Government of Canada (s. 209).

Yukon Territory

A) The Yukon Business Corporations Act: Legal Obligations

Incorporation under the Business Corporations Act enables an organization a series of benefits such as: perpetual existence; the power and capacity of a natural person; the ability to raise capital through issuing shares, while limiting the liability of the investors to the amount they have invested in the corporation. Each share entitles its holder to one vote at members meeting, thus the more shares held by a shareholder the greater number of votes the member is entitled to. Directors are elected by the shareholders and act on their behalf in carrying out the management of the corporation. Incorporation gives rise to a series of legal obligations to which the following section gives a general overview. Reporting corporations (i.e. those who trade shares publicly) are subject to addition regulation.

Incorporation processes

One or more persons may incorporate an organization by sending to the Registrar of Corporations:

- signed articles of incorporation which include the name of the corporation, the classes and any maximum of shares, any restrictions on the right to transfer shares, the number of directors, and any restriction that the corporation may carry on (ss. 7, 8, 9).
- documents showing that the corporations adopted name is not prohibited (ss. 9, 12, 13, 14)
- address of registered office, record office and for service by mail (ss. 9, 22)
- list of directors (ss. 9, 107)

Legal obligations under the Business Corporation Act

A corporation must have a registered office within the Yukon maintaining the following records (ss. 22, 23):

- its articles and by-laws, including any amendments,
- a copy of any unanimous shareholder agreements, including any amendments
- minutes of meetings and resolutions of shareholders
- lists of directors and security holders
- financial statements prepared for general meetings
- any disclosures of directors interest

The records must be made available to directors and shareholders during business hours and to other parties as outlined in ss. 24 and 25.

A corporation must be annually audited by a qualified auditor as prescribed in ss. 163-174, unless the shareholders resolve not to appoint an auditor (s. 165).

Articles, by-laws, and unanimous shareholder agreements

Articles are as stated at incorporation and can only be amended by way of a special resolution (i.e. a majority vote of two thirds of the shareholders (ss. 175, 177-182).

By-laws regulate the affairs of the corporation. Unless articles, unanimous shareholder agreements or by-laws provide otherwise, directors can make, amend and repeal by-laws. The directors must submit any such changes to the shareholders at the next shareholder meeting for approval, amendment or rejection (s. 103). A shareholder entitled to vote may also put forth a proposal to make, amend and repeal a by-law (ss. 103(5), 138).

A unanimous shareholder agreement is a written agreement to which all shareholders are deemed to be party. A unanimous shareholder agreement may regulate the rights of shareholders, the election of directors and the management of the business affairs of the corporation (s. 141).

Corporate Finance

All shares must be registered without a nominal or par value, i.e. without a stated or purchase value (s. 27). More than one class of shares, i.e. shares designating different rights to classes of shareholders, may be issued as set out by the corporation's articles (s. 30). If the corporation has only one class of shares, the rights of the holders are equal in all respects, including the right to vote at any meeting, receive dividends and the remaining property of the corporation on dissolution. Directors may issue shares as they determine subject to the articles, by-laws and unanimous shareholder agreement (s. 28).

Directors, officers and shareholders

A corporation shall have one or more directors who are responsible for the management and affairs of the company (s. 102) which includes, among other powers, the power to issue shares (s. 28), declare dividends (s. 116), approve financial statements (s. 116), borrow money (s.104) and appoint officers of the corporation (s. 123). While there is no residence requirement, directors must meet the requirements of s. 106 (i.e. not less than 19, not in bankruptcy, etc.). The first directors are named in the incorporation notice to the register and latter directors are elected by shareholders at annual shareholder meetings (s. 107). Careful attention should be paid to the specific liabilities of directors. (ss. 119, 120, 121, 122, 124, 128-132). The general duty of a director is to exercise their powers with honesty, in good faith, and in the best interest of the company (s. 124).

The Act does not require that a corporation have officers. However, directors may appoint officers with regard to ss. 123, 124.

Those who hold shares in a corporation are shareholders. Shareholders are entitled to the rights granted to them in the articles, by-laws, unanimous shareholder agreements, and the Act. They are generally only liable for the money they have invested; however a shareholder may have liabilities similar to a director if party to a unanimous shareholder agreement in s. 228(4) (s. 47).

Annual Shareholder Meetings

An annual meeting of the shareholders shall be called by the directors within fifteen months of the last annual meeting (s. 134). Meetings can also be called by a requisition of the directions by at least five percent of voting shareholders, or by the court (ss. 144, 145).

Notice is between twenty-one and fifty days and can be waived by the shareholders (ss.136, 137). A shareholder can submit proposals of matters to be raised at the meeting subject to the limitations in s. 138. Quorum is as stated in the by-laws or is otherwise a majority of shareholders (including those represented by proxy) (s. 140). Unless otherwise stated in the articles, each share of the corporation represents a vote (s. 141).

At the meeting directors must place before the shareholders a report of the auditor, if any, and a financial statement of the corporation during the period since the last meeting as prescribed in s. 157. At the meeting, the shareholders must at a minimum appoint or resolve not to appoint an auditor (s. 164) and elect new directors (s. 107).

Penalties, proceedings and dissolution.
Unless otherwise stated, a person found contravening the act is subject to a fine of not more than $1000 in the case of a corporation, and in the case of an individual, up to $1000 and/or six months imprisonment.

B) The Yukon Co-operative Associations Act: Legal Obligations
Five or more people may, by submitting and signing to a memorandum of association as prescribed the Act, may incorporate to carry on "a co-operative undertaking, business or industry" (sec. 3). The memorandum establishes the financial structure of the co-operative be it either with share capital or membership fees (sec. 3(3)) and designates the first directors of the co-operative. The by-laws, that must accompany the memorandum and be approved by the Registrar, establish the organizational and financial procedures of the co-operative. The Act prescribes standard by-laws that can be used or amended. The establishment and revision of the by-laws is a crucial component in the development of the co-operative. The by-laws set the criteria for membership in the co-operative (sec 1), the election of directors and procedures for special general members meetings. The association may amend the standard rules to address its specific objectives, but must address each of the sections in the standard by-laws in a manner that meets the approval of the Registrar (sec. 3(5), reg. 3). Once approved by the Registrar the memorandum and by-laws may only be amended by an extraordinary resolution which requires 30 days notice to the members of the resolution and approval by three quarters of the members (sec. 1). An application for incorporation must be accompanied by a $30 fee (reg. 4).

One of the distinctive characteristics of a co-op is that each member has one vote in the conduct of organizational matters such as business conducted at a members meeting, regardless of the number of shares held by the member (sec. 20(3). People may only become members of the co-operative upon approval by the directors, based on the criteria established by the by-laws (sec. 14 (3)).

Members
Members must meet the criteria established in the by-laws and be approved by the directors (sec. 14). Members may be expelled from membership in the co-operative for failing to comply with the by-laws, "by a two-thirds vote of the members, present at a special general meeting called to consider the expulsion" (sec. 14.8). Members may withdraw from the co-op in compliance with the by-laws. The directors may require notice of withdrawal of up to six months (sec. 26). In the case of withdrawal or expulsion the directors shall compensate the member the paid up amount of share capital, but only if it does not substantially reduce (ten percent) the working capital of the co-operative (sec. 26.2).

Directors
The operations of the co-operative are overseen by a board of three, where the number of members is less than ten, and at least five where there are ten or more members (sec. 18). The directors are elected from among and by the members (sec. 19). The directors may appoint and hire administrators (standard by-laws 4 and schedule sec. (a)).

Accountability
The affairs of the co-operative are kept accountable to the membership by the by-laws, by the annual election of directors, and by special general meetings. Special meetings must be called

by the directors if requested to do so in writing by twenty-five percent of the members and proper notice of the meeting must be given as stipulated by the by-laws (sec. 20, standard by-laws 1.3). At the general meetings each member has one vote (sec. 20.3).

Finances

In co-operatives with shares the shares are not transferable unless stipulated in the by-laws (sec. 12.4). If transfers are allowed by the by-laws no transfer is valid unless approved by the directors (sec. 12.6). Even if no transfer of shares is possible according to the by-laws shares are transferable in the case of death of the member to a person stipulated by the member in writing, prior to his/her death (sec. 13). Members are only liable for the unpaid portion of his or her shares, or in the case of a co-op without shares the member's liability is limited to unpaid membership fees (sec. 15).

Any surplus generated by the co-op's operations shall be distributed according to the by-laws (sec. 24) after allocation to a reserve for contingencies. The Act stipulates that, in the case of a co-operative with shares, not less than twenty percent of funds available for distribution to members must be allocated to the reserves and not distributed to members (sec. 25). The standard by-laws state that the remaining reserves be allocated to members in proportion to their use of the services or patronage of the co-operative (standard by-laws sec. 10.1(c)). A co-operative without shares shall set aside its entire surplus as a reserve and many not distribute any of it to its members (sec. 25.3).

Unless an extraordinary resolution is approved waiving the appointment an auditor for one financial year, the co-operative must appoint an auditor each year (sec. 29).

Recording, Reporting and Penalties

The co-operative must keep a list of members, including addresses and shares purchased and this list must be available to members inspection (sec. 16). The co-operative must provide the Registrar, and the members upon request, with annual financial statements (sec. 29). The co-operative must further provide the Registrar with any information required "for purposes of (the) Act" (sec. 29.9).

Any extraordinary resolutions or changes to the co-operatives memorandum or by-laws must be submitted to the Registrar for approval (sec. 8.2).

The Registrar may call an inquiry into the affairs or the co-operative if requested by a member of the "Executive Council" of the territorial government, or if requested by at least fifty percent of the members, if the co-op has less then ten members, or at least ten percent of the members, or six members whichever is greater, where there are more than ten members (sec. 31). The Executive Council Member may "cancel the incorporation of the association or appoint an administrator" to protect the interests of the members based on the report of the inquiry that shows that the affairs are being mismanaged or "are not being conducted in accordance with co-operative principles" (sec. 31).

Co-operatives that contravene the Act are liable to a fine of up to $1,000. An individual that contravenes the Act is liable to a fine of up to $500 (sec. 34).

C) The Yukon Societies Act: Legal Obligations

Groups of five of more persons may incorporate as a society for any lawful purpose other than carrying on a trade or business (s. 2 of the Act). Under the Act a society can provide services for a community and/or for the society's members while benefiting from the effects of incorporation such as: having perpetual existence; limiting the personal liability of the members of the society; and having the powers and capacity of a natural person (ss. 12, 13 of the Act).

To incorporate under the Act a group must submit application form 1 in the regulations to the Registrar of societies. The form contains the constitution, purpose, location, and names of the first directors of the society (s. 6 in the Act, s. 2 in the Regs.).

The activities of societies are limited by the Act and by the society's own constitution and by-laws. The constitution sets out the name, purpose and location where the operations of the society will be chiefly carried out (s. 3 of the Regs). The by-laws set out the procedures of the society. A society can draft its own by-laws or adopt Schedule A in the Regulations as it by-laws in whole or in part (s. 8 of the Act). The by-laws must include: provisions for the admission and removal of members and their rights and obligations; procedure for calling general meetings; the rights of voting at general meetings; the appointment and removal of directors and their duties, powers and remuneration; the exercising of borrowing powers; the appointment of accountants; the custody and use of the society's seal (if any); the preparation and custody of minutes of meetings of the society; the time and place records may be examined by members; the manner of making, altering or rescinding by laws; the arbitration or mediation of disputes; the winding up and the distribution of assets (s. 8 of the Act).

Incorporation under the Act gives rise to a series of legal obligations. A society must keep records and file records with the Registrar as required by the Act (s. 23 of the Act and ss. 4, 6, 8, 10, 11 of the Regs.).

Directors

Directors are elected by members to manage the affairs of the society (see ss. 3, 22-37, 44 of Schedule A in the Regs.). Directors are subject to specific liabilities in the Act and the by-laws (see s. 24, and 22-37 of Schedule A in the Regs.). A society is not able to issue shares or dividends and the interests of its members and are non-transferable (s. 5 of the Act). New members may be accepted as prescribed by the by-laws (in part 2 of Schedule A in the Regulations).

Meetings

The society must have annual general meetings (s. 16 in the Act and s. 5 in the Regs). At the meeting directors must place before the society information required by the by-laws. At a minimum this must include a financial statement as set out in s. 9 of the Regulations (s. 16 of the Act).

For the purposes of financial accountability s. 7 of the Regulations creates three categories of societies: those with revenues of $150,000 or more and assets of $300,000 or more, referred to as category A societies; those with revenues of more than $20,000 and less that $150,000 and assets of more than $100,000 and less than $300,000, referred to as category B societies; and those societies with revues of less than $20,000 and assets less than $100,000 referred to as category C societies. Category A societies must include in their financial statements an

independent audit, Category B societies may waive this requirement byway of special resolution, while category C societies must only conduct an audit upon request of the Registrar (ss. 9, 11 of the Regs). Following general meetings the financial statements of category A and B societies must be filed with the Registrar (s. 10 of the Regs). Category C societies are not required to file financial statements unless requested by the Registrar (s. 11 of the Regs.).

Investigations and Penalties

If a society fails to file a record with the Registrar or if the Registrar believes on reasonable and probable grounds a society is conducting itself contrary to the Act, the Registrar may cancel the incorporation of the society and dissolve the society on conditions it sees fit (ss. 20, 21 of the Act). The Registrar has the power to investigate complaints of breaches by societies of the Act (s. 22).

A security holder and the Registrar may apply to the court for an investigation to determine fraudulent, dishonest, or oppressive behaviour by a corporation and its associate.